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CURRENT TOPICS

Composite Judgments

APART from the income tax points with which the case was concerned, *Whitworth Park Coal Co., Ltd. (In liquidation)* v. *Inland Revenue Commissioners* [1959] 3 W.L.R. 842; p. 938, *ante*, is of interest because of the mode of delivery of the judgments. At the conclusion of the argument VISCOUNT SIMONDS found himself in full agreement with LORD REID, who wrote an opinion to which Lord Simonds intended to add nothing. Lord Reid, however, had been prevented by illness from taking his seat in the present Parliament and was accordingly unable to speak in it. Lord Simonds therefore adopted Lord Reid's opinion as his own (with the latter's permission) and read it but, before doing so, intimated that LORD TUCKER was unable to be present in the House but took the same view. LORD RADCLIFFE delivered a dissenting opinion and LORD KEITH OF AVONHOLM an opinion in accord with the majority opinion. With only three speeches made the report runs to thirty-two pages in the *Weekly Law Reports* and, with all respect, practitioners and students alike must be grateful that they do not have to read any further speeches, particularly if these contained repetition of the facts and opinions already ably stated. It will be recalled that as from last April the standing orders of the House of Lords relating to appeals were altered with the commendable view of securing economies; for instance, copies of acceptable reports of the judgments of the courts below in any case may now be lodged instead of reproducing such judgments *in extenso*. It would be in line with the spirit of these alterations if it became the usual practice for one composite majority judgment to be delivered in the House. This is already the standard practice of the Judicial Committee of the Privy Council and the Court of Criminal Appeal, and upon occasion is done by the Court of Appeal and the Divisional Courts. We do not envisage the disappearance of dissenting speeches which are so often of great interest and from time to time point the way to legislative reform. The great advantage of a composite judgment is the orderly statement of facts and legal points in their logical sequence; much time (as well as paper and storage space) would be saved if all references to any given point were to be found together and not scattered throughout the speeches separated from each other by several pages.

Solicitors as Judges?

IN last week's debate on the Judicial Pensions Bill in the House of Lords, LORD OGMORE argued in favour of more county court judges being appointed to the High Court Bench. A further point of his, that the solicitors' profession

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has never been a source either for High Court or for county court judges, was taken up by LORD CHORLEY, who argued in favour of solicitors being considered for judicial appointment He pointed out that in his experience some county court registrars were of the calibre required for the county court bench and, with the experience so gained, in time they might well qualify for the High Court Bench. At present only a small minority of solicitors ever attain judicial eminence; when they do they have first to have their names removed from the roll of solicitors and then must be called to the Bar. Some of the tenacious few who have trodden this arduous course and reached the Bench have made outstanding judges. We hope that serious consideration will be given to making solicitors of standing eligible for judicial appointments.

County Court Funds

THE County Court Funds (Amendment) Rules, 1959 (S.I. 1959 No. 2063), which come into operation on 1st January, 1960, amend the County Court Funds Rules, 1953, in several respects. Rule 2 authorises payment by cheque for sums of or over £2 sent by post, and abolishes the need for giving a receipt for such payments; smaller sums may be sent by money order, postal order or cheque at the registrar's discretion. The transfer to investment accounts of moneys accumulated in deposit accounts is facilitated by r. 4. The rate of interest allowed on money standing in an investment account is increased from 3½ per cent. to 4 per cent. per annum by r. 5. The new Rules also make amendments consequential on the supersession of the County Courts Act, 1934, by the County Courts Act, 1959; we published an article on the 1959 Act in our issue of 13th November (on p. 889).

Provision for Husbands

SECTION 1 (1) of the Inheritance (Family Provision) Act, 1938, as amended by the Intestates' Estates Act, 1952, provides that where a person dies domiciled in England leaving, *inter alia*, a wife or husband, then, if the court on application by or on behalf of any such wife or husband is of the opinion that the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable provision for the maintenance of that wife or husband, the court may order that such reasonable provision as it thinks fit be made out of the net estate of the deceased for the maintenance of the surviving spouse. The courts have been very reluctant to make orders under this statutory provision to provide for the maintenance of widowers. Indeed, in *Re Silvester; Silvester* v. *Public Trustee* [1941] 1 Ch. 87, Farwell, J., said: "I do not consider that in the ordinary way applications by husbands for this sort of assistance should be readily entertained. *Prima facie* a husband should be able to maintain himself, and ought not to ask the court to give him, out of his wife's estate, more than she has thought fit to provide for him." In that case a husband and wife married in 1913 when the husband was forty-two years of age and he gave up his employment to nurse his wife and care for their home. The husband was without independent means and his wife had always defrayed all the household and living expenses. The wife died in 1940 and bequeathed her husband an annuity of £52 per annum. The net value of her estate was some £19,000 and she left the residue to charities. The court decided to make an order for the payment of £4 per week for the husband's maintenance. In *Re Pointer; Pointer and Shonfeld* v. *Edwards* [1941] 1 Ch. 60, having regard, *inter alia*, to the husband's "age, his physical infirmities and the scantiness of his means," Morton, J., ordered the payment out of the deceased's estate of a sum not exceeding 5s. per week to assist her husband. However, it seems that the American courts are much more generous in this respect. In a recent case in San Francisco a woman bequeathed two-thirds of her estate, which was valued at £321,000, as a memorial to her dog, and left only 7s. 1d. to her husband aged ninety-one. The court decided that the widower should be paid a monthly allowance of £535, but we know of no case in England in which a surviving husband has been nearly so fortunate.

Quantum of Damages

Two interesting and important points arose in *Schneider* v. *Eisovitch* (1959), *The Times*, 9th December, where the plaintiff sued as administratrix of the estate of her deceased husband for damages under the Fatal Accidents Acts, 1846 to 1908, and also on her own behalf for damages for personal injuries. The actions arose out of a motor accident in France in which the plaintiff's husband was killed and the plaintiff suffered injury. The first question which arose was whether the plaintiff could recover £110 special damages for the expenses incurred by her brother-in-law and his wife, when they flew out to her from England after the accident to accompany her home and to arrange for the body of her husband to be brought to England for burial. PAULL, J., decided that she was entitled to recover this sum as it was a necessary and reasonable consequence of the defendant's wrongful act and the plaintiff had undertaken to pay the amount recovered to her brother-in-law and his wife. The court was also asked to decide whether the plaintiff was entitled to damages for shock at the death of her husband, who was killed outright in the accident. The accident rendered the plaintiff unconscious, but when she awoke in hospital she was told of her husband's death and suffered shock. His lordship stressed that the mere fact that the defendant caused the death of her husband did not entitle the plaintiff to damages for shock, but he held that she was entitled to damages under that head as her injury had flowed from the defendant's breach of duty to drive with reasonable care.

The Solicitors' Journal: Unauthorised Extracts

OUR attention has been drawn to certain publicity circulars recently distributed to the profession by an organisation known as Business Economy Products, Ltd., in which facsimile extracts from an article by Mr. PHILIP LAWTON in our issue of 29th May, 1959, were reproduced. The use of these extracts was totally unauthorised by either Mr. Lawton or the Proprietors of THE SOLICITORS' JOURNAL, and was made without their knowledge or approval. The company have withdrawn the circular and have undertaken to destroy all remaining stocks, have expressed their apologies, and have agreed to the publication of a statement in these columns.

LIABILITY OF THE POLICE-CONSTABLE IN TORT—I

THE preservation of law and order in England has always been a matter of local organisation. Thus, the officers who kept the peace, the parish constables and borough watchmen, were officials with a local jurisdiction which was exercised under the somewhat superficial control of the justices of the peace.

This feature, distinctive to the British constitution of local not central organisation of the police, was retained by the Legislature when, during the middle of the nineteenth century, such statutes as the County Police Acts, 1839 and 1840, the Municipal Corporations Acts, 1835 and 1882, and the County and Borough Police Act, 1856, were enacted, which reorganised the system of the police forces. Thenceforth, a form of organisation uniform to the whole country was administered by local bodies specifically appointed for this purpose. Thus the watch committees of the borough corporations and the standing joint committees in the counties became the police authorities responsible for the administration of the police forces in their respective areas.

The exception to this system is found in the Metropolitan Police District, where an entirely different form of police organisation exists. In this area the Home Secretary is the police authority under the provisions of the Metropolitan Police Acts, 1829 to 1856. He is responsible to Parliament for the administration of the force which is under the control of the Chief Commissioner of Police and his assistants. The administration of the Metropolitan Police Fund is the responsibility of another official, the Receiver for the Metropolitan Police District, who, like the Chief Commissioner of Police, is appointed by the Crown.

As well as providing for the administrative reorganisation of the police forces, the legislation of the nineteenth century also created a new type of police officer. Here, again, the Legislature did not make any direct break with the past, because the new police-constable continued to exercise the powers formerly exercised by the holders of the ancient office of keeper of the peace.

Present function of the police

To-day, it is the function of the police forces maintained by the local police authorities to enforce the law and preserve the peace. This involves a variety of duties, the principal ones being the prevention of crimes and offences; the investigation of crimes and offences which have been committed; and the detention of offenders. In the metropolis, the police have also duties of a more national character, which include the protection of the Sovereign, the extradition of aliens, the organisation of the C.I.D., etc.

For these duties the police-constable requires special powers enabling him to interfere with the private rights of individuals, e.g., powers of arrest. These he has acquired from two sources. In the first place, the police-constable has inherited the common-law powers formerly exercised by the holders of the ancient office of keeper of the peace. Secondly, both public and private Acts of Parliament confer important powers upon him, the latter Acts being obtained by local authorities which require special police powers for their particular areas.

Although it is essential for the preservation of law and order that these powers should be conferred on the police, for without them individual liberty would not exist, nevertheless their exercise by police-constables does sometimes result in injury to private individuals. Thus, in the course of their duties, police-constables, like other public officers (e.g., customs officers: *Barnard* v. *Gorman* [1941] 3 All E.R. 45), are liable to commit wrongful acts which cause damage to private persons. Examples of such acts are unlawful arrest and false imprisonment (*Dumbell* v. *Roberts* [1944] 1 All E.R. 326); wrongful seizure of goods (*Gordon* v. *Metropolitan Police Commissioner* [1910] 2 K.B. 1080 (C.A.)); trespass on property (*Elias* v. *Pasmore* [1934] 2 K.B. 164); and malicious prosecution (*Wright* v. *Sharp* (1947), 176 L.T. 308).

Inevitably, the person injured by some wrongful act of a police-constable requires compensation for the damage caused to him. The problem with which he is faced is whether he can obtain damages and costs in respect of his injury, and from whom can he obtain them.

Tortious liability governed by common law

At the present time, the tortious liability of the police-constable for injury resulting from the exercise of his powers is governed by common-law rules. These rules have been evolved and applied by the courts in cases in which the status of the police-constable and the powers which he exercises have been under consideration.

In considering the development of these common-law rules, it must first be observed that the special powers, both statutory and common-law, which are exercised by the police-constable for the purposes of his duties have a distinguishing feature. This relates to the manner in which the powers are conferred upon the police-constable. They are conferred directly upon the police-constable himself and they are exercised by him by virtue of his office.

This direct grant of powers has important consequences. In the first place, it means that no administrative authority can supervise the police-constable in exercising his powers. Secondly, by judicial interpretation no authority exists which is responsible in law for injury resulting from any wrongful exercise of powers by the police-constable.

With regard to administrative control being exercised over the police-constable in performing his duties, apart from matters relating to the administrative organisation of the police forces, the police authority or superior officers of the police-constable cannot supervise him as he exercises his powers. As the powers of the police-constable are conferred upon him personally, he must rely upon his personal discretion whenever the exigencies of his duties require him to take some action.

Further, since the powers of a police-constable have been granted directly to him, there is no question of any delegation of powers to him by his superiors. Thus, the superiors of the police-constable cannot control the extent of his powers by increasing or curtailing the powers which have been conferred upon him. "His authority is original, not delegated, and is exercised at his own discretion by virtue of his office" (*A.-G. for New South Wales* v. *Perpetual Trustee Co., Ltd.* [1955] A.C. 457 (P.C.), at p. 489).

This independence which the police-constable enjoys because of the direct grant of powers to him, is again seen in the position which he holds in relation to central and local authorities. Thus, as will be seen, by virtue of his office, the police-constable holds a status which is independent in regard to both these authorities.

Master and servant relationship not applicable

The police authorities responsible, subject to certain supervisory powers which are exercised by the Home Secretary, for maintaining the police forces in their areas have statutory powers enabling them to appoint, dismiss and exercise powers of discipline over the police-constables. They pay the wages, allowances and pensions of the police-constables as well as providing housing accommodation, uniform and equipment for them.

In these circumstances, it might be thought that the relationship of master and servant would apply to police authority and police-constable. Consequently, the police authority would be vicariously liable for the tortious acts of the police-constables engaged by it. This is not so. At common law a police-constable is an officer of the law and the proper officer of the justices of the peace to enforce the law (*Mackalley's Case* (1611), 9 Co. Rep. 65*b*, 68*b*), a position which has been preserved by the statutes enabling the police authorities to maintain police forces. By these statutes in both town and county the police-constable is required to obey and execute the orders of the justices of the peace, but there are no corresponding statutory provisions requiring him to obey the orders of the police authorities, either the watch committee or the standing joint committee (*Fisher* v. *Oldham Corporation* [1930] 2 K.B. 364, at p. 370; see also *Andrews* v. *Nott-Bower* [1895] 1 Q.B. 888). Thus, the essential element of control of the master over the acts of his servants, which is necessary to establish the ordinary relationship of master and servant, is lacking in the relationship which exists between police authority and police-constable.

An attempt to impute liability for the tort of a police-constable to the police authority was made in the case of *Fisher* v. *Oldham Corporation*, *supra*. This case, typical of other actions brought against the police, related to an action for damages for false imprisonment brought by Fisher against the police authority because he had been arrested by mistake for another person. The point in issue in this case was the position of the police-constable in relation to the police authority. After reviewing the common-law decisions and statutory provisions relating to the status of police-constables, McCardie, J., held that a police-constable was not a servant of the borough. A police-constable, he said, was " a servant of the State, a ministerial officer of the central power, though subject in some respects to local supervision and regulation." Consequently, the action failed. The police authority was not liable because the police, in arresting and detaining Fisher, were not acting as servants or agents of Oldham Corporation but as officers of the Crown and public servants.

Relationship between police-constable and the Crown

This use of the term " officer or servant of the Crown " to describe the status of the police-constable may seem to imply that the relationship of master and servant exists between Crown and police-constable. This aspect of the position of the police-constable in law was recently discussed in the case of *A.-G. for New South Wales* v. *Perpetual Trustee Co., Ltd.*, *supra* (applied in *Metropolitan Police District Receiver* v. *Croydon Corporation* [1957] 2 Q.B. 154). In the *New South Wales* case, the Attorney-General, on behalf of the Crown, claimed to recover from the respondents the salaries and allowances paid to a police-constable appointed under the Police Regulation Acts, 1899 to 1947, who had been injured by the negligent driving of a vehicle belonging to the respondents. He contended that an action *per quod servitium amisit* would lie at the suit of the Government for the loss of the services of the police-constable employed by it. In this case, also, the point in issue was whether the relationship of the police-constable with the Government of New South Wales was one which was usually recognised in law as that of master and servant so that an action *per quod servitium amisit* would lie at the suit of the Crown. It was held that the relationship between State and police-constable was not that of master and servant. In the view of the Privy Council there was a " fundamental difference between the domestic relation of master and servant and that of the holder of a public office and the State which he is said to serve. The constable falls within the latter category." Therefore the action did not lie.

When the status of a police-constable in relation to the Crown is described as " officer or servant of the Crown " this really means servant in the sense of public servant, i.e., a person who holds a public office and performs public duties. Thus the police-constables " fulfil their duties as public servants and officers of the Crown sworn ' to preserve the peace by day or by night, to prevent robberies and felonies and misdemeanours and to apprehend offenders against the peace ' " (*Fisher* v. *Oldham Corporation*, *supra*).

The tortious liability of the police-constable has, therefore, been determined by the courts by having regard to his status in relation to the central and local authorities. The principles which they have evolved have protected the independent status of the police-constable as an individual who possesses special powers for the purposes of his duties. Accordingly, liability for the torts of police-constables cannot be imputed to central or police authorities.

It might be thought that the reorganisation of the police forces and the additional statutory duties continually being imposed upon police-constables might have affected the legal position of the police-constable at the present time. But the status of the police-constable has remained unchanged. " To-day, as in the past, he is in common parlance described in terms which aptly define his legal position as ' a police officer,' ' an officer of justice,' ' an officer of the peace ' " (*A.-G. for New South Wales* v. *Perpetual Trustee Co., Ltd.*, *supra*, at p. 480). *(To be concluded)*

MARY BELL CAIRNS.

Honours and Appointments

Mr. RICHARD MARVEN HALE EVERETT, Q.C., has been appointed Recorder of the Borough of Deal.

Sir EDWIN SAVORY HERBERT, solicitor, of London, will receive an honorary degree of Doctor of Laws from the Court of the University of Leeds on 19th May, 1960.

Mr. JOHN PASSMORE WIDGERY, O.B.E., T.D., Q.C., has been appointed Recorder of the Borough of Hastings.

Mr. JOHN BROOKE WILLS has been appointed Recorder of the Borough of Huddersfield.

Obituary

Mr. JOHN ARMSTRONG BATY, solicitor, of Hexham, died recently, aged 79. He was admitted in 1903. Mr. Baty was a former member of the Barbarians Rugby Union team, and has played rugby and hockey for Northumberland.

Mr. OLIVER VERNON COCKERTON, solicitor, of Bakewell, Derbyshire, died on 5th December, aged 53. He was admitted in 1929.

Mr. HARRY WRAY, solicitor, of Hull, died recently, aged 96. He was admitted in 1885. Mr. Wray is believed to have been the oldest practising solicitor in Britain.

THE GOVERNMENT'S NEW PENSIONS SCHEME

WITHOUT much publicity the National Insurance Act, 1959, received the Royal Assent on 9th July. It contains the Government's scheme for higher pensions based on graduated contribution rates which will apply to employed (but not self-employed) persons. The scheme is due to come into force on 6th April, 1961, and will be compulsory for all employed persons, except those serving in non-participating employments, for whom the present scheme will continue to operate. The ordinary practitioner will be concerned with the Act partly because of its impact on the pension rights of his own staff and partly because he may be called upon to advise upon the obtaining of certificates of non-participation by clients who have provided their employees with pension rights under a private scheme.

The present scheme

The present weekly contribution rate paid by employees over eighteen and under pensionable age is 9s. 11d. for a man and 8s. for a woman. The employer pays 8s. 3d. a week for a male employee and 6s. 9d. for a female employee. The contribution rate is the same however much the employee earns, provided he receives more than £3 a week. Pensionable age is sixty-five for men and sixty for women. On attaining pensionable age and retiring from regular employment, retirement benefit is payable based on a standard pension for life of £2 10s. a week. The wife of a retirement pensioner can obtain a pension of £1 10s. a week on her husband's insurance contributions' record. The benefits are the same however many contributions have been made, provided that the employee has paid 156 contributions and has an average of fifty contributions a year since his last entry into insurance.

The new scheme: contributions

Instead of a flat rate contribution, the new scheme provides for a basic contribution, for employees earning between £3 and £9 a week, together with a graduated contribution for those earning over £9 a week. The basic weekly contribution for employees will be 8s. 4d. for a man and 7s. 2d. for a woman, and for the employer 7s. for a male employee and 6s. 4d. for a female employee. The weekly graduated contribution paid by an employee of either sex will be 10d. for every pound of remuneration over £9 with a maximum of 5s. 1d. for persons earning £15 a week or more. The employer pays a graduated contribution of the same amount as that of the employee. Thus the total weekly contribution paid by an employee earning £15 a week or more will be 13s. 5d. for a man and 12s. 3d. for a woman, while the employer will pay for each 12s. 1d. and 11s. 5d. respectively.

The new scheme: benefits

Persons who pay only the new basic contributions, that is, those earning £9 a week or less, will still receive a retirement pension of £2 10s. a week, and the wife's entitlement will remain the same as in the present scheme. For those who have paid graduated contributions, the retirement pension will be increased by 6d. a week for every unit of graduated contributions paid by the employee. The graduated contributions paid by the employer do not count for the purpose of calculating units. The unit is £7 10s. for men and £9 for women. It has been calculated that a man earning £15 a week or more from the age of eighteen to pensionable age would pay graduated contributions to the amount of eighty-two units, and would thus receive an increase to his retirement pension of £2 1s. a week.

Non-participation

At any time, either before or after the scheme comes into force, an employer who runs his own pension scheme can apply for a certificate of non-participation to cover either the whole or a specified section of his staff. The staff covered by the certificate will continue to contribute and receive benefits under the present scheme. The option is conferred on the employer, not the individual employee, and if the employer wishes to apply for a certificate for only some of his staff, it is likely that he will have to specify the section concerned not merely by reference to their remuneration but by reference to some other, more stable, identifiable characteristic. For instance, it should be possible to obtain a certificate to cover female shorthand typists as such; it might not be possible to obtain a certificate to cover (say) persons earning £10 a week or less as such.

Application for certificate

The employer must apply to the registrar appointed under s. 13 of the Act in accordance with the National Insurance (Non-participation—Certificates) Regulations, 1959 (S.I. 1959 No. 1860). These regulations, amongst other things, require that the employer shall give notice to the employees affected before applying for a certificate. The employees have a right to make representations to the registrar in connection with the proposed issue of a certificate. The registrar, before issuing a certificate, must be satisfied that the employee's service in the particular employment will qualify him under a recognised superannuation scheme for equivalent pension benefits. "Recognised superannuation scheme" is defined in s. 8 (4) as a scheme secured by irrevocable trust, contract of assurance, or annuity contract, satisfying such conditions as may be prescribed. The National Insurance (Non-participation—Benefits and Schemes) Regulations, 1959 (S.I. 1959 No. 1861), prescribe that a trust, to come within the definition, must be subject to the law of any part of Great Britain. A contract of assurance or annuity contract must be made with either an insurance company within the meaning of the Insurance Companies Act, 1958, or a registered friendly society, or an industrial and provident society. An annuity contract will also qualify if made with the National Debt Commissioners. "Equivalent pension benefits" are defined in s. 8 (1), and in effect the employee must receive, on attaining pensionable age as defined in the National Insurance Acts, a non-assignable, non-commutable pension for life of at least the amount of graduated increase to his National Insurance retirement pension which he would have earned if he had paid graduated contributions at the maximum (£15 a week) rate.

Payments in lieu of contributions

If a person goes from a participating to a non-participating employment, no difficulty arises; his graduated contributions remain in the National Insurance Fund, and he will get an increase in his National Insurance retirement pension when he eventually retires. When, however, an employee leaves a non-participating employment and takes a post in a participating employment, the former employer may be under an obligation to make a payment into the National Insurance

Fund. This payment is called a payment in lieu of contributions, and is a sum equal to the difference between the contributions actually paid (i.e., the same as the present scheme) and the contributions, including graduated contributions, which would have been paid under the new scheme if the employee had been earning £15 a week. The payment only has to be made if, on leaving the employment, no provision is made for a pension in respect of the service in the non-participating employment. Very often a private scheme provides for frozen pension rights, i.e., the contributions made by employer and employee during the period of employment remain in the fund, and a pension is payable at retiring age, based on those contributions. In such a case, no payment in lieu of contributions would be required. If the employee is entitled to a return of contributions, the employer can reclaim from him one-half of the payment in lieu of contributions.

The new graduated contributions will be collected with Sched. E income tax under the P.A.Y.E. system. The Act enables regulations to be made to permit all social service contributions to be collected in the same way.

The Act provides for four quinquennial rises in contribution rates, beginning in 1965. The rises apply whether or not the contributor is participating in the new scheme, the actual increases being made proportionately. The units of graduated contributions will also be proportionately increased.

Participation or non-participation ?

Before deciding whether or not to apply for a certificate of non-participation, the employer must clearly consider if he will get better value for his money from a private scheme underwritten by an insurance company. Obviously, no decision should be made until some quotations have been obtained, but the following general remarks may be of some assistance.

In the first place, it is better for the lower paid worker to participate in the new scheme. He (and his employer) will be paying less, but he will get the same benefit as at present. The employee whose weekly remuneration is £9 a week or less will be paying 8s. 4d. a week, instead of 9s. 11d. a week, and will get the same benefit. For those earning up to about £12 a week, the same is true. They may, at the top end of this range, be paying a little more than at present, but the benefit is greater than at present.

Thus, employers with lower-paid workers, e.g., agricultural workers, will almost certainly find it best to let their employees participate in the new scheme. The same considerations apply to groups of staff, e.g., shorthand typists, who are unlikely to earn more than £12 a week.

For higher paid staff, however, the benefits conferred by the graduated part of the new scheme can be obtained more cheaply by contribution to an insurance scheme. The only important qualification to this is that, with higher age groups, the cost of the private insurance scheme will be high, whereas with the national scheme the contribution rate in relation to benefits remains the same, whatever the age of the contributor.

The Life Offices Association, 33 King Street, London, E.C.2, have issued a most instructive booklet entitled "The National Insurance Act, 1959, Interrelation with Occupational Pension Schemes," obtainable free of charge. Two illustrations from that booklet give some indication of the factors to be taken into account in deciding for or against participation in the new national scheme. First, take a group of 100 male employees, average age forty. Assume their average weekly rate of remuneration is £15; under the present scheme the employer pays £2,145 a year contributions, and the employees £2,579. Under the new scheme, the employer's contribution would go up to about £3,012 and the employees' to £3,358. The increase in the employer's contribution is £867, and in the employees' £779. Thus the additional cost to employer and employees is £1,646. The Life Offices Association say that commercially the benefits could be purchased for £976, thus giving an overall saving of £670.

The second example is of a similar number of employees, with a similar average weekly remuneration, but an average age of forty-five. The difference between the present national contribution and the new national contribution will be the same as before; the commercial cost of the benefits would, however, have increased to £1,196, so that the overall saving would only be £450 a year.

Conclusions

The new scheme is only financially attractive to those earning about £12 a week or less. For higher paid employees, it will be advantageous for both employer and employee to contract out of the new scheme, except for higher age groups. The benefits provided by the new scheme are very meagre as compared with the benefits offered by a good private scheme, and it is doubtful if the new scheme will detract materially from a good private scheme. Employers who have been considering the possibility of starting a private pension scheme for their employees may well be advised to consider what financial advantages are to be obtained by non-participation in the new national scheme.

J. A. W.

"THE SOLICITORS' JOURNAL," 17th DECEMBER, 1859

On the 17th December, 1859, The Solicitors' Journal, discussing the elevation of Sir Henry Keating to the Bench, wrote that "the late Solicitor-General possessed the double recommendation of being an able and well-practised lawyer and of having rendered meritorious services to his political party . . . A question of some importance and one that must be definitely settled some day, as to the relative claims of professional position and political services, is thus postponed . . . The tendency in the public mind in favour of mere legal and judicial qualifications has no doubt been greatly strengthened within the last few years. No appointments to the judicial Bench have more favourably influenced the reputation of those who made them than those in which the obligations of party were altogether overlooked. The conviction is gaining ground every day that, at all events in the case of puisne judges, political considerations should be wholly disregarded. Of course, so long as the Law Officers of the Crown are expected to be members of the House of Commons and may be called upon to discharge important party services, the principal judicial appointments must always be regarded as objects of ambition to barristers in Parliament belonging to the party in power. But it is certainly not an unreasonable suggestion that, if the highest dignities in the law are only to be obtained in such a manner, election to the lesser dignities shall depend simply upon the possession of those qualifications which are actually required . . . The public have no great faith in judges of whom they have heard but little as counsel. And there is unquestionably something unseemly in making the ermine a reward of party service. Nevertheless, according to the theory of political ethics which prevailed unchallenged until lately, such was the case in fact; and no doubt some barristers of eminence who are now in Parliament, and who generally support the present Government, would have reason to exclaim against any appointment which wholly overlooked their claims."

The Practitioner's Dictionary

"RELATIVES"

THE expression "relatives" would seem to have the same meaning as "blood relations" (see, e.g., *Hibbert* v. *Hibbert* (1873), L.R. 15 Eq. 372) and "relations" (see, e.g., *Re Patterson Dunlop* v. *Greer* [1899] 1 Ir. R. 324) and in each case the *prima facie* meaning appears to be legitimate kindred. Indeed, in *Hibbert* v. *Hibbert, supra*, Sir James Bacon, V.-C., thought it was "perfectly clear that the word 'relations' standing by itself would mean next of kin." The *prima facie* exclusion of illegitimate children may be illustrated by reference to *Re Saville* (1866), 14 W.R. 603, where a testator bequeathed a certain sum to his "relatives," and those of his wife, as she should appoint. The wife appointed certain sums to the children of the testator's elder brother, whom the testator had always treated as, and considered to be, legitimate, but who, it was afterwards discovered, had been born before the marriage of his father and mother. Wood, V.-C., found nothing on the face of the will to show what was meant by "relatives" and as "the law knew but one set of relatives . . . the word could not possibly include the illegitimate children."

However, the word "relations" was given its secondary meaning in *Re Deakin; Starkey* v. *Eyres* [1894] 3 Ch. 565. The testator gave all his property to his wife for life, and after her death directed the payment of legacies and gave a moiety of the residue of his property to his wife's "relations" as she might direct. The testator's wife was born out of wedlock but her parents married after her birth and had other children. The wife was always recognised by her parents as their child and no difference was made by them between her and her natural brothers and sisters. The testator knew that his wife's parents were not married at the time of her birth and at the date of his will she was forty-seven years of age and childless. Having survived the testator, the wife purported to exercise the power in favour of the children and grandchildren of her natural brothers and sisters. Stirling, J., held that the word "relations" was to be read in its secondary sense and he had no difficulty in holding that by his wife's relations the testator meant "those persons who had recognised her and been recognised by her as relations, viz., the persons who would have been her relations in case her birth had taken place after instead of before the marriage of" her parents. The word "relatives" was given its secondary meaning in *Seale-Hayne* v. *Jodrell* [1891] A.C. 304.

Who is entitled to take under a gift to "relatives," and in what proportions? In *Re Deakin, supra*, Stirling, J., took the view that the class to take under a gift to "relations" was the statutory next of kin of the wife at the date of her death. In the first edition of Jarman on Wills, vol. 2, p. 45, it was said: "The word *relations* taken in its widest extent embraces an almost illimitable range of objects; for it comprehends persons of every degree of consanguinity, however remote, and hence, unless some line were drawn, the effect would be that every such gift would be void for uncertainty. In order to avoid this consequence, recourse is had to the Statutes of Distribution; and it has been long settled that a bequest to relations applies to the person or persons who would, by virtue of those statutes, take the personal estate under an intestacy, either as next of kin, or by representation of next of kin." It follows, therefore, that in the case of a will made after the passing of the Administration of Estates Act, 1925, a gift to "relations" will be construed as a gift to the persons who would have been entitled under the Act if the testator had died intestate.

Further authority for this statement may be found in *Re Bridgen; Chaytor* v. *Edwin* [1938] 1 Ch. 205, where the testatrix directed "all my possessions to be held in trust after my death and divided equally amongst all my relations." Clauson, J., found that the rule of convenience which had been adopted by the courts was that "relations" should be construed as meaning those who would have taken under the Statute of Distribution had there been an intestacy. His lordship could not see his way to adopt a new rule of convenience to the effect that the term "relations" should be construed as referring to the persons within the degrees of consanguinity indicated in the Act as constituting them possible beneficiaries in the case of intestacy, and he declared that upon the true construction of the will and in the events which had happened the estate of the testatrix should be divided in equal shares *per capita* among the persons who would have been entitled under the Administration of Estates Act, 1925, if she had died intestate.

However, the principle applied in this case must be read subject to two qualifications. In *Salusbury* v. *Denton* (1857), 3 K. & J. 529, Sir W. Page Wood, V.-C., conceded that the term "relatives" could, in any particular case, include persons other than those capable of taking within the Statute of Distribution. Thus, in *Greenwood* v. *Greenwood* (1779), 1 Br.C.C. 31*n*, the testator directed that the residue of her estate should be divided between her relations, that is, the Greenwoods, the Everits, and the Dows. The Everits were not within the degree of relationship limited by the Statute of Distribution but they were deemed to take jointly with the Greenwoods and Dows, who were, as the testator had shown an intention that the word "relations" should mean more than "next of kin." However, in *Green* v. *Howard* (1779), 1 Br.C.C. 31, the case in which *Greenwood* v. *Greenwood, supra*, was cited, it was decided that a legacy of "£4,000 to my wife for her life, and after her decease to my own relations who shall be then alive," should be confined to the testator's relations within the Statute of Distribution as "there is no particularity in the will to alter the sense of the word relations" (*per* Thurlow, L.C.).

The second qualification is that there may be circumstances in which "relatives" or "relations" will take *per stirpes* and not *per capita*. In *Fielden* v. *Ashworth* (1875), L.R. 20 Eq. 410, there was a gift of residue to be distributed "to my relations, share and share alike, as the law directs." Sir R. Malins, V.-C., said that if it had been merely a gift to the relatives, share and share alike, then the relatives would have included only those under the statute and they would have taken *per capita*. As it was, the testator had added the words "as the law directs" and his lordship held that the words "share and share alike" should be disregarded, and he directed that the property should be divided as the law directs, i.e., *per stirpes*, according to the Statute of Distribution.

D. G. C.

Personal Note

Mr. ROBERT WARNER BESWICK, solicitor, of Hanley, Staffordshire, for over fifty years in practice, has retired.

Common Law Commentary

PHONETIC EQUIVALENTS

THE House of Lords have settled a point of importance and difficulty in regard to the registrability of a word-mark where it is the phonetic equivalent of a non-registrable word. A man may use such a word as a trade mark or trade name and he may, as the plaintiff had done in this case (*Electrix, Ltd.* v. *Electrolux, Ltd.* [1959] 3 W.L.R. 503; p. 755, *ante*), have built up considerable goodwill in the word as a common-law mark, but because word-marks, as distinct from device-marks, appeal as well to the ear as to the eye, the House of Lords held that they were not registrable.

Opinions were divided on the matter, the Assistant Comptroller having been prepared to grant registration and Wynn Parry, J., having upheld his decision. But the Court of Appeal reversed the judge and their view was, as indicated, followed by the House of Lords. The House admitted that there was room for wide difference of opinion by virtue of s. 9 (3) of the Trade Marks Act, 1938, which provides that "in determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which (*a*) the trade mark is inherently adapted to distinguish as aforesaid; and (*b*) by reason of the use of the trade mark or of any other circumstances the trade mark is in fact adapted to distinguish as aforesaid." Viscount Simonds was predisposed to uphold the judgment of the Assistant Comptroller in view of its excellence, but concluded that he had erred in principle.

Unregistrability of equivalent decisive

One point of principle wherein the Assistant Comptroller and the judge erred was on the unregistrability of the phonetic equivalent of the word sought to be registered. In this case the word sought to be registered was "Electrix" and the unregistrable equivalent was "electrics." In their formal case the appellants practically accepted the unregistrability of "electrics" by the statement: "The appellants do not contend that the word 'Electrics' would be registrable." Whether or not distinctiveness was or could be acquired in respect of the use of the word "Electrics," as to which, of course, there was no evidence, since it was not the actual word sought to be registered but only its phonetic equivalent, the learned law lord said that "it would be a hopeless task to persuade the tribunal that it was not inherently unregistrable." Their lordships having decided that the proper principle was that a word cannot be registered if its phonetic equivalent is not registrable, it followed that "Electrix" was unregistrable.

Earlier cases

The more important of the earlier authorities concerned with the problem were exhaustively dealt with in the judgments of the Court of Appeal (*sub nom. Re Electrix, Ltd.'s Application* [1958] R.P.C. 176). One of these was a case before the Court of Appeal with a judgment which is high in the list of "shortest judgments." It was *Re Edward Ripley & Son's Trade Mark* (1898), 14 T.L.R. 299, and concerned an application in respect of the word "Pirle," which was an anagram of "Ripley" without the letter "y" but which was also the phonetic equivalent of "Pearl." Application for registration was refused since "Pearl" was said not to be eligible for registration because it was mere commendation. Kekewich, J., upheld the refusal and so did the Court of Appeal in its very short judgment, which was: "We do not see our way to accede to this application. We cannot do it unless we are prepared to lay down a proposition that we do not think any court should. We cannot say that a man may register in any class of goods a word which sounds exactly like a word that could not be registered. The reason is obvious: it would be putting a monopoly upon the public which would be utterly unjustifiable. That is the short reason."

Then in 1910 there were the "Perfection" and "Orlwoola" cases rejecting the registration of those words, the first because the word "perfect" admittedly could not be registered and the second because of its phonetic resemblance to "all wool." Fletcher Moulton, L.J., said (*Re Crosfield & Sons' Application; Re Brock & Co.'s Application* [1910] 1 Ch. 130, 150): "The mis-spelling does not affect the words when spoken, so that we only have to decide whether the words "all wool" are proper for registration in respect of such goods."

Comment

Since this is a decision of the House of Lords the matter is a closed book unless Parliament decides to open it. Section 9 (3) is in rather broad terms, but it must not be overlooked that according to the wording of the section the question is not whether the word is distinctive (e.g., by long use) but whether it is "adapted to distinguish" and this point was made in the speech of Lord Simonds.

Great inconvenience could be caused if a trader could have the monopoly of a word which is in common use. For example, if "Orlwoola" was registrable, care would have to be exercised in using the expression "all wool" in writing or speech.

The reasons which prompt traders to choose the words they do are multifarious and sometimes inexplicable. There seems to be a fascination in "clever" composite words that purport to describe or indicate the qualities a consumer desires to see and get. Whether the psychology of that fascination is sound or fatal may be questioned. But at the moment the law places a suitable barrier.

L. W. M.

Societies

Sir Sydney Littlewood, president of THE LAW SOCIETY, gave a luncheon party on 7th December, at 60 Carey Street, W.C. The guests were: The Austrian Ambassador, Sir Charles Wheeler, Sir George Coldstream, Sir Anthony Hawke, Dr. D. P. Stevenson, Mr. Reginald Cudlipp, Sir Dingwall Bateson, Mr. G. D. G. Perkins, and Sir Thomas Lund.

At the annual general meeting of the MID-ESSEX LAW SOCIETY held at Brentwood on 27th October, 1959, the following officers were elected for 1960: President—Mr. G. C. Green, of Brentwood; vice-president—Mr. P. J. B. Church, of Witham; hon. secretary—Mr. A. R. Carroll, of Brentwood; and hon. treasurer—Mr. T. C. Gepp, of Chelmsford.

County Court Letter

THE NEVER-NEVER LAND

THE Never-Never Land dreamed up by the late Sir James Barrie had no connection whatever with the world of extended credit, and indeed, as a good Scot, he would probably have been horrified at the idea of anyone buying something for which he could not afford to pay. Nevertheless, the Never-Never Land of his imagination and the world of hire purchase and credit sale appear to have some points in common. For one thing, if memory serves, his was peopled by distinctly unworldly characters, among them a collection of naïve young men who continually skirmished with a pistol—(if that is the correct group noun)—of pirates. The ins and outs of the matter escape one at this distance of time, but there never seems to have been much more than an uneasy peace between the two sides even at the final curtain.

In the days when Peter Pan was written, it was only the so-called upper classes who could afford to live on credit, but with the advent of democracy, the habit of owing money has spread even to what used to be known as the working classes, now renamed the lower income group. (No prize for deciding which is the more apt title.) Hire purchase, once regarded in much the same way as wearing braces with shirt sleeves, eating margarine, or travelling third class on the continent, has now become a normal and quite respectable way of buying almost anything from an aeroplane to a holiday. Whereas the person who did not pay for what he bought used to be considered a bit of a blackguard, nowadays the person who does is thought something of a blackleg.

The figures published for September show the national hire-purchase debt to be £784m., which represents about £18 per head of the population, men, women and children. Presumably this figure does not include credit-sale finance, nor the amount owing to credit drapers which must run into many millions. From this it can fairly be deduced that the old-fashioned idea of saving up for a thing that you wanted, and going without it if you could not afford it, is as dead as Queen Victoria. To-day we buy; to-morrow, with luck, we shall pay.

It would be for the social historian to trace the history of this change in the buying habits of the country, and indeed the world, but memory aided and abetted by a little imagination suggests that it started to take general effect in the late 'twenties, particularly in respect of motor cars and vacuum cleaners, then being extensively hawked from door to door. The lean years of the early 'thirties no doubt led to a substantial increase in buying on credit, and, once the idea that there was something slightly shady about it had disappeared, it grew by leaps and bounds.

With the increase in demand more and more finance companies specialising in this kind of business came into existence, and no doubt among them were a number of "wide boys," attracted by the get-rich-quick possibilities of this class of business. Rates of interest were high because of the inherent risk of bad debts, and in some cases were fantastic. It is always hard for a purchaser to realise that if he is paying £110 over a year for an article the cash price of which is £100, he is paying a lot more than 10 per cent. interest on the money he has borrowed, and if his repayments are weekly instead of monthly the interest rate is even higher. Moreover, since the property in goods the subject of a hire-purchase agreement does not pass to the purchaser until all has been paid, it was in those days possible for them to be re-possessed and re-sold even after a substantial sum had been paid by the hirer should he default in a single payment. All sorts of "heads-I-win-tails-you-lose" provisions crept into the agreements of some of the less reputable finance companies, and generally speaking the pirates were having it all their own way.

The Tinkerbell Act

In 1938, it appears that Parliament decided that hire-purchase and credit-sale buyers needed protection, and, adopting the role of the good fairy, it passed the Hire-Purchase Act of that year. Not since the Sale of Goods Act, 1893, can any Act have introduced such severe restrictions and conditions into a form of private trading. Most of them are designed to protect the buyer, and the opinion that the Legislature had of the I.Q. of purchasers and the integrity of sellers is painfully apparent.

Actions for the recovery of goods the subject of a hire-purchase agreement within the Act, as amended by the Hire-Purchase Act, 1954—and most of such agreements other than for the purchase of new motor cars are within it—have to be brought in the county court (s. 12 (1) of the 1938 Act). Though practitioners may be expected to be familiar with these Acts, detailed as they are, the actual sellers of goods, as opposed to the finance companies, sometimes are not. One meets from time to time cases in which the provisions of ss. 2 and 3 have not been observed, particularly with regard to the stating of cash price, and the signature of agreements incompletely filled in. Defendants in hire-purchase actions, who nearly always appear in person, are naturally even less likely to know what their rights are. The fact that s. 8 of the Act implies conditions and warranties very similar to those under ss. 12 and 14 of the Sale of Goods Act, 1893, means nothing to them, but in practice a very common defence is that the goods supplied were of inferior quality or did not function properly. Such defects in some cases may be sufficiently serious to lead to the conclusion that the goods were not of merchantable quality. A television set that worked for only six weeks in ten months has been so held (*Mohar Investment Co., Ltd.* v. *Wilkins* (1958), 108 L.J. 140), but in the most usual case the fault complained of is of a relatively trivial nature and, depressingly often, is alleged to have appeared only after default in payment has been made. In any event, it is always hard to convince a defendant that defects in the goods purchased normally do not relieve him of the liability to repay the money he borrowed to buy them.

The provisions of s. 12 of the 1938 Act as to the powers of the court in actions for the recovery of goods where one-third of the hire-purchase price has been paid sometimes give rise to difficulties, even to solicitors. It will be remembered that s. 12 (4) provides for (*a*) the making of an order for specific delivery; (*b*) the making of such an order postponed on terms; and (*c*) the making of an order vesting some part of the goods subject to the agreement in the hirer, with specific delivery of the remainder. This third order is only made when the amount paid is sufficient to cover the price of that part of the goods transferred to the hirer plus one-third of the balance of the hire-purchase price (s. 12 (6)) and is apparently something of a rarity. The order for specific delivery under

s. 12 (4) (*b*) can only be made when the court is satisfied that the goods are in the hirer's possession (s. 12 (5)), and when the defendant does not appear, which is frequently the case, this presents difficulties. Before the 1954 Act, moreover, an order for specific delivery could not be satisfied by payment in full, and in order to overcome these difficulties there was formerly, and perhaps still is, much to be said for the court making an order in the normal detinue form of return or value, suspending its operation on the payment of instalments under the general provisions of s. 96 (1) of the County Courts Act, 1934, now s. 99 (1) of the County Courts Act, 1959. Such an order can, of course, be made even when one-third of the purchase price has not been paid.

Theme and variations

Order 7, r. 7A, of the County Court Rules, 1936, as amended, sets out what must be contained in the particulars of claim in an action for delivery of goods let under a hire-purchase agreement, but rugged individualists introduce a surprising number of variations. Though the value of the goods claimed is nearly always deemed to be the unpaid balance of the hire-purchase price, a claim for arrears of instalments is often included. Since a judgment for this amount might mean that the owner received more than the total hire-purchase price, a common practice is to adjourn this part of the claim generally. It can always be restored if by any chance the goods are returned and on resale realise less than the hire-purchase price minus the sum already paid under the agreement.

Though originally designed to help the buyer, hire purchase can also greatly help the seller. Once the contract is signed he is paid in full. Admittedly, he may have had to enter into a recourse agreement with the finance company under which he has to take an assignment of the agreement if the buyer defaults, or again he may have to indemnify the company, but for the moment at any rate, the money is in his pocket. Finance companies and purchasers alike have on occasion been taken for a ride by unscrupulous dealers who rely on the time lag between the sale of the goods and the failure of the buyer to pay an instalment as it falls due. The goods are sold to the purchaser on such apparently favourable terms that he buys more than he otherwise would, sometimes not taking delivery at the time. All too soon he finds himself obliged to pay for goods that he may not even have received, while the finance company is faced with recovering its money from someone who obviously cannot afford to pay the instalments agreed. The dealer, in the meanwhile, is probably comfortably in Australia.

Hire purchase, as a method of buying, undoubtedly has great advantages. It also has considerable pitfalls. All too often a man will take on commitments that he can only fulfil while he and his wife are both working, or while he is being paid at a rate in excess of what he can normally obtain. The most common "defence" in hire-purchase cases is that when the agreement was entered into, the defendant was earning more. It is often very hard for him to realise that the liability to pay remains, even if the ability to do so does not.

Pay as you wear

The growth of the credit draper's business has been remarkable in recent years. Almost anyone can become an "agent," introducing customers from among their friends and relations for a small commission. An enormous number of summonses are taken out in the county court against customers and defaulting "agents" every week. However, one customer at least discovered how to take the best advantage of the amazing bargains offered. He was a labourer who had so many children that he could make more money out of unemployment pay and public assistance than he could by working. For this reason, if none other, he seldom worked.

The welfare state, however, only provides subsistence, and its contributions leave little over for clothing, furniture and so on. Our hero therefore hit on the ingenious plan of obtaining through various credit drapers a complete, though modest, wardrobe for himself, his wife, and all his children. He then managed to obtain several essential items of furniture such as beds and bedding from an over-enthusiastic dealer on hire purchase, and as an afterthought bought an electric drill on credit sale.

The weekly payments for these commodities coming to more than he could either earn or obtain by not working, he invested £10 from his wife's Post Office Savings Bank account in filing his own petition in bankruptcy.

In view of the amount of tick involved, the headline to this Never-Never Land story might well be "Crocodile Bites Pirate."

J. K. H.

Practical Conveyancing

PARTY WALLS AND FENCES

A CLAUSE in these or similar words is frequently found in conveyances: "The walls and fences on the north and south sides shall be party walls and fences and shall be maintained and repaired accordingly." Undoubtedly, it is often advisable to define the ownership of party walls and fences in this way. It is also wise to insert an express provision as to the responsibility for repairs. This is so because in the absence of an express agreement on the matter neither of the owners of a party wall is bound to keep it in repair. Nevertheless, wording such as that quoted seems unsatisfactory and could well be improved.

It is very easy to insert a provision that a wall shall be repaired "accordingly," but it is more difficult to define the duties and rights of the parties which will result. The words must imply that someone is obliged to carry out repairs and he, or someone else, can be required to pay for them. Immediately we attempt to express the intention of the parties in the form of a covenant, we expose the doubt which can result from words such as those we have mentioned above.

Notwithstanding the well-known four-fold classification of party structures in *Watson* v. *Gray* (1880), 14 Ch. D. 192, it seems that an express declaration to the effect that a structure should be a party wall would, before 1926, have created a tenancy in common. It follows that the Law of Property Act, 1925, s. 38, provides, in substance, that an arrangement expressing a wall or other structure to be a party wall or structure shall have the effect of severing the structure vertically as between the respective owners, but that the owner of each part shall have rights to support and user over the rest of the structure, corresponding to those which

would have subsisted if a valid tenancy in common had been created. No obligation to carry out repairs is imposed, however.

We have not been able to find any judicial authority as to the liability to repair where the document effecting severance merely states that the structure shall be maintained " accordingly." The rule as to vertical severance may be reasonable in the case of a substantial wall, but its application to a dilapidated wooden fence almost defies imagination. It could be argued that the obligation of each owner is to repair his half only. As this would be impossible in many cases, it seems more reasonable to suggest that either owner may carry out necessary repairs and recover half the cost from the other.

Having regard to these doubts a better form of wording should certainly be used. It is suggested, for instance, that the phrase recommended in Key and Elphinstone's Precedents, 15th ed., vol. 1, p. 592 (" the respective owners . . . shall contribute equally to all necessary repairs ") is more satisfactory. If either owner wished to repair he could do so and, provided he could prove that the work was reasonably necessary, he could recover half of the cost from his neighbour.

* * * * *

PRACTICE AND COSTS

In the issue of 6th November last (p. 869, *ante*) we referred to the suggestion made at the Annual Conference of The Law Society that purchasers who acquire property with the assistance of a mortgage should be given a property certificate setting out particulars of boundaries, responsibility for repairs, rates and any restrictions and conditions. The intention of those initiating the proposal was that information should be available in a convenient form to a person who did not hold the title deeds of his property.

It was understood that the Council of The Law Society might investigate the matter and, in the meantime, we invited any of our readers who might have practical experience of difficulties caused to purchasers to express their views. Readers will have noted the letter from Messrs. Bonnett, Son & Turner, printed in the issue of 20th November (p. 915, *ante*). They point out that it is a solicitor's duty to inform his client of these particulars before the client signs the contract, and state that their normal practice is to write to the client sending him the particulars with the contract for signature.

We agree that most of the information proposed to be inserted in a certificate should be given, and is normally provided, before contract. On the other hand, we would suggest that there might be two reasons why the need is not completely met. In the first place, further information may be obtained after the contract is signed, for instance, as to boundaries or enforceability of restrictive covenants; not all contracts specify these accurately or in sufficient detail. Secondly, some purchasers do not understand information sent to them in writing with the draft contract, and if explanations are given at an interview it is not always necessary or convenient to reduce them to writing at that stage. It might be suggested also that information provided with the draft contract is not likely to be retained for future reference in the way in which it is intended that a formal certificate should remain available.

No other reader has commented on the suggestion, from which we draw the conclusion that there is little evidence of the need to provide a certificate, and so we do not feel inclined at this stage to carry the discussion further.

J. GILCHRIST SMITH.

Landlord and Tenant Notebook

POSSESSION FOR NON-AGRICULTURAL USE

VARIOUS questions may arise when the landlord of an agricultural holding desires to develop the premises as building land. The tenancy agreement may or may not entitle him to resume possession of the holding or some part thereof for the purpose in hand. He may or may not have obtained planning permission. He may want the whole or only part of the holding. Questions may then arise out of three different provisions in the Agricultural Holdings Act, 1948.

Notice to quit part

Section 30 modifies the common-law rule by which a notice to quit part of demised premises is invalid. It applies to yearly tenancies, and to notices given by landlords, validating such a notice if given, *inter alia*, with a view to the use of the land for the object of the erection of farm labourers' cottages or other houses with or without gardens. I shall have something to say about view and object later, but propose now to discuss the moot point whether " other houses " means houses for farm labourers.

The validating provision is in s. 30 (1), the relevant conditions being the " with a view to the use of the land to which the notice relates for any of the objects mentioned in the following subsection "; eight such objects are mentioned in subs. (2), and the one referred to is the first of these. The only reported decision on the point was a county court decision, *Cook* v. *Vane* (1957), 107 L.J. 476; it was held that the " other houses " need not be farm labourers' houses. This was a literal interpretation; but it may be that the " farm labourers " is meant to qualify " other houses " as well as " cottages," the " with or without gardens " being added to emphasise the Legislature's approval of gardens for farm labourers, further emphasised by the next object: " (*b*) the provision of gardens for farm labourers' cottages or other houses." In so far as the validity of the proposition depends on the consideration that the statute is concerned with agriculture, some support could be found for this interpretation in the nature of some of the other approved objects (*c*), (*d*) and (*e*) (provision of allotments and of smallholdings; planting of trees), but not in that of all; (*f*) is concerned with mining and quarrying; (*g*) with the making of a watercourse or reservoir, and (*h*) with the making of a road, railway, tramroad, siding, canal, or basin, or a wharf, pier, or other work connected therewith. It could perhaps be said that in every case some benefit to agriculture or some development benefiting the public is contemplated, so that the idea that a landlord was to be authorised to give notice to quit part

of a farm in order to enrich himself by starting a building estate would be inconsistent with the intention of the enactment. I will leave it at that.

Authorised resumption

Section 23 is the section concerning the twelve months' minimum notice to quit whole or part; the first subsection contains five provisoes excluding its operation, the second being that it shall not apply " (*b*) to a notice given in pursuance of a provision in the contract of tenancy authorising the resumption of possession of the holding or some part thereof for some specified purpose other than the use of the land for agriculture." I will deal with " purpose " when I come to discuss view and object; all there is to say about the paragraph is that in one respect it makes the position look more simple and more advantageous to agricultural landlords than is in fact the case. *Re Disraeli Agreement; Cleasby* v. *Park Estates (Hughenden), Ltd.* [1939] Ch. 382, showed that, unless the period of the notice is long enough to enable the tenant to give the requisite one month's notice of intention to claim more than the minimum compensation for disturbance (the equivalent of a year's rent) or to claim compensation for high farming (ss. 34 (2) (*c*) and 36 (1) (*i*) respectively), the provision will fall foul of the section prohibiting contracting out (s. 65 (1)) and be void.

Planning permission

Thirdly, there is the provision in s. 24 (1) (*b*) excluding the right to challenge by counter-notice where " the notice is given on the ground that the land is required for a use, other than agriculture, for which permission has been granted on an application made under the enactments relating to town and country planning, or for which (otherwise than by virtue of any provision of those enactments) such permission is not required . . ."

An example of the " permission not required " alternative can be found in the report of the county court case of *Teignmouth Urban District Council* v. *Elliott* (1958), 108 L.J. 204. The discussion did not make it clear whether there must be any development at all. In such cases as those with which we are dealing, however, a landlord will normally rely on planning permission.

Intention

It is, of course, not sufficient that permission should have been obtained. The land must be required for the (non-agricultural) use; and when recourse is had to the right to give notice to quit part conferred by s. 30 (1), that notice must be given with a view to the use of the land for an object; while if the landlord is to avail himself of a contractual right to resume possession, it must be for some specified purpose.

Do the words " required," " view," " object " and " purpose," or any of them, connote an intention, and must that intention be not only genuine but within the power of the person intending to carry out?

Bona fide intention

Long before the Legislature began conferring security of tenure on agricultural and business tenants, it was held, in *Russell* v. *Coggins* (1802), 8 Ves. 34, that a right to resume possession " if the premises should be required for building " could not be exercised unless the landlord both wanted the land for building and could build upon it. The case was a typical pre-Judicature Acts one, the tenant asking Equity to restrain the landlord from enforcing a legal right. Grant, M.R.'s judgment included the following passage, more recently quoted by Cozens-Hardy, M.R., with approval in *Southend-on-Sea Estates Co., Ltd.* v. ***Inland Revenue Commissioners*** [1914] 1 K.B. 515 (C.A.): " The intention could never be, that he should be at liberty to come, and say, he wants it, without the least proof that it is wanted. In this instance he says something more; that he applied to the plaintiff; stating, that he wished to have it for building; and that it was not colourable; for he had entered into a treaty: if he had said, an agreement, there would have been an end of it. There is no defence in law. The question, therefore, whether the land was *bona fide* wanted, can only be here; and it is not so clear, that the defendant did want it, that he ought to be permitted to proceed at law; where he must inevitably succeed. I am clearly of opinion, that he has not shown, that it is wanted; and therefore shall grant this injunction." (The punctuation is Vesey's.)

The " intention " referred to above was, of course, that of the proviso in the agreement; but, in my submission, the equitable principle underlies the reasoning of a number of authorities produced by the Landlord and Tenant Act, 1954, s. 30 (1) (*f*) and (*g*), showing that a landlord opposing an application for a new tenancy on the ground that he intends to demolish or reconstruct, etc., the premises, or to occupy them for the purposes of his own business or as a residence, must not only genuinely intend but also be reasonably able to achieve what he intends. It is of some importance that when this question of ability was gone into in *Reohorn* v. *Barry Corporation* [1956] 2 All E.R. 742 (C.A.), the court applied the decision in *Cunliffe* v. *Goodman* [1950] 1 All E.R. 720 (C.A.), a decision on the meaning of "would at or shortly after the termination . . . be pulled down " in the Landlord and Tenant Act, 1927, s. 18 (1): i.e., a subsection which does not use the word " intend," or, for that matter, mention " view " or " object " or " purpose." I would suggest that Denning, L.J.'s " A man cannot properly be said to ' intend ' to do a work of reconstruction when he has not the means of carrying it out. He may *hope* to do so; he will not have the *intention* to do so " (in *Reohorn* v. *Barry Corporation*, *supra*) expresses a principle which would be applicable to a landlord alleging a view to the use of the land for the object of building purposes, to one alleging that he is resuming possession for such a purpose, and to one alleging that the land is required for use as building land.

Negotiation

So far, only the provision in s. 24 (1) (*b*) of the Agricultural Holdings Act, 1948, has produced authority on the point. In *Jones* v. *Gates* [1954] 1 All E.R. 158 (C.A.), the landlord of a field, having obtained planning permission, served a notice to quit stating that the land was required for a use other than agriculture, etc. At the hearing of the action for possession he said that he intended to sell the field as a sports ground (which it had once been), that he had had inquiries from a business firm, and that he would have no difficulty in selling the land for the purpose in question. The county court judge, accepting this evidence (including the " intends " !), held as follows: " On that evidence [counsel for the landlord] says that a reasonable prospect of use is shown and that satisfies the word ' required.' I do not think that in the absence of a definite person or persons willing to negotiate there could be said to be such a reasonable prospect and I am not, therefore, satisfied that the holding is ' required ' for the purpose." In the Court of Appeal, Sir Raymond Evershed, M.R., said that he entirely agreed with this: " He [the county court judge] said there is no one in

negotiation with the landlord nor, as it seems to me on the evidence, was there anybody at any relevant time." Jenkins and Morris, L.JJ., concurred.

No reference was made to *Russell* v. *Coggins*, *supra*, in the above case; and what is of interest is that the Court of Appeal would (though there was no occasion actually so to decide) apparently have been satisfied with much less than was considered necessary by Sir William Grant, namely, a willingness to negotiate. For in the older case, being " in treaty " was held not to enable the landlord to satisfy the equitable requirement. But both in the Landlord and Tenant Act, 1927, s. 18 (1), case of *Cunliffe* v. *Goodman*, *supra*, and in the Pt. II of the Landlord and Tenant Act, 1954, case of *Reohorn* v. *Barry Corporation*, *supra*, the fact that plans and negotiations had not reached an advanced stage proved decisive.

R. B.

SOLICITOR ADVENTURER—I

THE summer that I passed my finals, there came quite unexpectedly my way the chance of becoming for a few months personal assistant to an American oil tycoon. It was a case of a few days' notice, rushing home from Scotland to pack my bags, and I was on my way to Oklahoma. After some interesting and extremely varied experiences in the wide mid-west, I was able later that year to travel through the United States. With the coming of winter and my funds becoming precariously low, I arrived in the city of Toronto. There, finding that I would have no little difficulty in satisfying the recently altered requirements of the Upper Canada Law Society in order to be admitted to practice in Ontario as a barrister and solicitor, I was happy to accept the appointment of claims officer in a giant insurance company in Toronto. This job turned up most providentially when I was wondering just how many more days work were left for me in the " big store " where I had been lucky enough to have been taken on as a Christmas-time extra. There was widespread unemployment in Toronto that winter, and meeting disillusioned and hungry immigrants, many of them British, I considered myself fortunate in my job of pushing trucks of merchandise all day long.

Insurance company job

I found the insurance job interesting, as it fell to me to scrutinise a large number of the claims referred to the head office by the company's various offices across Canada. This entailed acquiring as quickly as possible some knowledge of such things as the peculiarities of the law relating to negligence claims in the Province of Quebec, and the idiosyncrasies of adjusters in Alberta or timber truckers in British Columbia. The majority of claims which I handled were classified as " automobile," and I was astounded at the ingenuity of some of the claimants. There was a certain Manitoba lawyer whose routine bi-monthly claim was greeted in the office with considerable interest. Anything from a new car to an aerial or a seat-cover was good enough for him, and he invariably strained his legal rights to their utmost. Then there was the Illinois farmer who had a personal injury claim for something over $50,000, in respect of an " unmending " broken arm he had sustained over a year previously. Although our adjusters were ready to swear in court that they had seen him doing heavy work on his farm, his lawyer, who I understood was on a 40 per cent. retainer, would not think of letting so promising a claim drop. I remember in particular one letter in which he threatened the full rigours of a trial before a Chicago jury, and the support of a team of expert medical witnesses. The letter concluded with a vivid description of how his client, suitably swathed in bandages, would relish the chance of telling the jury about his terrible misfortunes! There also came my way claims arising from fire, storm and flood, and more than once I had to give a final ruling on whether certain facts could be considered an act of God. There were claims arising from other unusual incidents such as the falling of a flag-pole at a fair, and the dropping of a block of ice from an aircraft, as well as complicated highway construction bonds often involving losses of millions of dollars. So many new highways were being built, and it seemed to me that for every one there was a crop of construction engineers unable to fulfil their contractual obligations. There was plenty to learn, and masses of work to be done. The Canadian business executive is hard-working and money-conscious to a greater degree than his European counterpart. A quality in demand in the young executive or salesman is " aggressiveness," and this is a clue to their outlook and methods, and indeed to Canada's prosperous future. The public are well aware of the advantages of insurance in all its forms, as I soon discovered, and I was not surprised to find that in Ontario there was an automobile registered in the name of one adult person in every three.

Claims for " whip-lash "

A personal injury claim which had to be approached with the utmost caution was one for the rather nebulous complaint known as " whip-lash " This, as may be known, is an injury to the nervous system through the imposition of a sudden and severe strain affecting the back, and more often the neck. It may result in severe headaches and prolonged discomfort. Consequently, a claim for damages may soar to fantastic figures in a matter of a week or two. We in claims office soon learned to view potential whip-lash claims with apprehension. It was not surprising therefore that when, after being involved in a motor smash, I went to ask the claims manager for an extension of sick leave, he commented: " I suppose you have got a whip-lash claim! " After I had shown him the diagnosis and medical reports, he added that he had no doubt that I would now want to take myself off to one of the sunny West Indian islands to recuperate and enjoy the proceeds of the settlement of my personal injury claim. The idea had already occurred to me, and within a week I was flying on my way to Bermuda.

After the rigours of the Ontario winter and the unpleasant headaches from which I had been suffering, I found the sandy beaches, the clear blue sea and the warmth of Bermuda's weather just the tonic I needed. Nor was I in a hurry to return to the bleakness and icy winds of Toronto. After a short time I heard that a replacement had been found for me, and I hurried along to accept the job of assistant that I had been offered by the counsel for the head overseas office in Bermuda of a world-wide American life insurance organisation " We have problems involving British jurisdictions," said the president. " We think you have the qualifications to deal

with them, and we should like to have you with our organisation." The head counsel added rather apologetically that, as I was not on a regular executive basis, he could only give me a salary of "so much." He named a figure that I would have been happy to earn after several years in a London solicitor's office. So surprised was I at my luck that I believe I had the impertinence to ask for the company's sanction to my taking on at the same time the job of French consul in the colony, a position I had been asked to assume for a few months. I think I should interpose a word of caution here lest my apparent good fortune should serve as encouragement to others to chance their luck overseas, thereby forsaking the solid and safe future that they are no doubt building up at home. To be sure, I appreciated that the high cost of living prevailing in Bermuda, as a tax-free tourist resort, meant that my income was only about half as good as it at first sounded to me. Besides I had to run the gauntlet of the Bermuda Immigration Board, who enforce their powers with the greatest stringency on all those applying to them and not bringing substantial business to the island or engaged in the hotel and entertainment trade. This test I survived, thanks to the backing of my employer company.

Business in Bermuda

Working as an executive in a large American commercial concern was at first rather awe-inspiring. Once I had become accustomed to the high pressure and streamlined methods, however, I began to enjoy the experience very much. I found that those who had at first blinded me with their frightening efficiency were really the most friendly individuals. For days at a time I would be left to my own devices, absorbed in some complex problem involving revenue or company law, often both, and frequently in some distant part of the globe. Sometimes there would be an intriguing problem of private international law with regard to beneficiary designations. A policy beneficiary would turn out to be an illegitimate child, or the policy-holder's mistress in a country that did not recognise that such persons had any legal status, and they would be prevented from enforcing their rights. Was the contract contrary to public policy? Where and how was it made? By consultants who were expressly not designated agents, or by the post? There were intriguing complications. In case I should not be kept fully occupied, I was in my early enthusiasm inveigled into undertaking the mammoth task of compiling summaries of commercial law and insurance expressions and idioms in French, German and Spanish. However, being a backroom boy did not mean that I saw nothing of how the organisation worked in the three dozen and more different jurisdictions in which it carried on its life insurance business. Every employee was encouraged to show an interest in the function of departments other than his own. Each morning I plunged through a mass of papers that arrived regularly on my desk, and devoted an hour or more to scanning a wide variety of correspondence files, magazines, and propaganda, all neatly tabulated with suggestion slips. This exercise was most revealing of modern American business methods, and at the same time the salesmanship jargon was excellent light relief from some of the complex problems that confronted me.

The questions which have probably occurred to the reader are: Why should the head overseas office of an international group be situated in Bermuda? What are the advantages of such an arrangement to an American life insurance company? There is no straightforward answer to these questions since there are a variety of relevant considerations. The operating costs, e.g., the servicing of policies, remittance of premiums in bulk, and agency matters, can be made in sterling rather than in dollars, and this "soft currency" operation was looked upon as beneficial to the company's operations. Such an arrangement does leave the company free from certain U.S. regulations both as to Federal taxes and State insurance legislation. In addition, Bermuda has strategic importance in a world-wide commercial network as it is an ideal as well as a pleasant place in which to have banking and finance experts gathered together. It is within easy reach of New York, where this group had its headquarters office for executive personnel. The general advantages of Bermuda as a "profits sanctuary" and an international business centre should not be overlooked in this context, and I intend to outline these in a further article, when I shall also mention the Bahamas.

(To be concluded) M. H. B.

HERE AND THERE

NOTE FOR EXPLORERS

SOME time next year there is to be a mass movement or pilgrimage of English lawyers to the United States. Probably most of them will go as explorers wondering how wild is that westland and what precautions they should take to avoid becoming involved in a West Side story. They probably know better than to take the films as an infallible guide to etiquette and social institutions, but what about the newspapers? Is our own daily life in England as full of crime and catastrophe as a diligent archæologist 2,000 years hence would deduce from digging up the remains of the British Museum's library of periodicals? So our common sense would tell us that it must be very little of the United States that finds its way into the newspaper columns. Still, even that little has a distinctively different flavour from the highly-seasoned journalistic version of our own on the whole rather humdrum little lives. It gives a clue to what the English lawyer will find foreign about his colleagues over there. Suppose as you walked down the Strand you were to see a large poster with bright green letters on a hoarding adjuring you to "Keep Judge Boot off the Bench," you would envisage immediate proceedings against somebody for contempt of court, motions by the Attorney-General and a committal directed in terms of the most uncompromising severity. Then if just beside it you were to see a bright red poster proclaiming "Wiggins for Judge," you would realise that somehow the national attitude towards the judiciary had undergone a subtle change. Yet that sort of thing is a commonplace in the United States, where judicial office is to a great extent elective. District attorneys also have to stand for election, and election campaigns are far fiercer and more uninhibited in America than anything any English candidate has had to cope with since the days of Eatanswill, as observed by Mr. Pickwick. James Traver in his recent book, "Small Town D.A.", has described how during his campaign to get himself elected District Attorney in a rather

remote area of Michigan, he even plastered a public lavatory with his posters. I hardly think that even a prospective county court judge would be expected to do that in England.

OTHER COURTS, OTHER WAYS

LET the English lawyers, then, be prepared to meet judges who possess a good deal more of the common touch than even the most colloquial and unconventional occupant of the Bench over here. What, then, of court procedure as reflected in the scraps of reports that reach the English newspapers? Most of it seems to be a good deal less inhibited than our own, though some of the lawyers over there look with envy at the greater restraint in English court manners and, attributing it to the wearing of robes, they have set a movement afoot for getting more American judges into gowns. I once knew a Boston lawyer who used to amuse himself and tease his colleagues by citing some old statute "passed in the reign of His late Majesty King George III." In "the cradle of liberty," that did not go down at all well. Sometimes the American court news almost gives one the impression of the rough old frontier justice. The other day there was the story of a burglar tried at Belleville, Illinois, who, after being sentenced to three years' imprisonment, started to leave the court grinning. The judge called him back. "I don't like your smirk," he said. "You can go to gaol for five years." By contrast, the Johnnie Ray trial at Detroit lately had all the makings of a film musical and will probably end up as one with suitable adaptations. It must be the first trial anywhere in the world where the jury has consisted entirely of women. If the lyric writers and choreographers of Hollywood can't do something with that they have lost their golden touch completely. There would be a chorus and dance for the jury entering the box; the acquitted defendant's dramatic fainting fit; a solo for Rose, the forewoman of the jury solicitously bending over him: "Oh, that poor boy!" It would go over big. But for the benefit of those who, like myself, prefer comedy or farce, I recommend some producer to find occasion to use the episode of the strangely passive and self-possessed mouse which invaded a New Jersey court so obstrusively, it would seem from the report, that the judge gave the order "Get that mouse out of here." All the men just stood and gaped, but the lady who was plaintiff, grabbed it by the tail and handed it to a court attendant. "You're fabulous," beamed the judge. On second thoughts, I realise that that is really a ready-made plot for one of those angular comedy cartoons with infinite scope for facial contortions by judge, mouse, plaintiff and the rest and an elaborate chase over and under bench, seats, tables, jury-box. Nature is always trying to egg on art to further and better efforts.

RICHARD ROE.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Indecency with Children Bill [H.L.] [9th December.

To make further provision for the punishment of indecent conduct towards young children, and to increase the maximum sentence of imprisonment under the Sexual Offences Act, 1956, for certain existing offences against young girls.

Public Health Laboratory Service Bill [H.L.] [9th December.

To establish a Public Health Laboratory Service Board for the exercise of functions with respect to the administration of the bacteriological service provided by the Minister of Health under section seventeen of the National Health Service Act, 1946.

Read Second Time :—

Atomic Energy Authority Bill [H.C.] [3rd December.
Commonwealth Scholarships Bill [H.C.] [8th December.
Distress for Rates Bill [H.L.] [8th December.
Judicial Pensions Bill [H.C.] [8th December.
Lord High Commissioner (Church of Scotland) Bill [H.C.] [8th December.
Mr. Speaker Morrison's Retirement Bill [H.C.] [3rd December.
Post Office and Telegraph (Money) Bill [H.C.] [3rd December.
Sea Fish Industry Bill [H.C.] [8th December.
Water Officers' Compensation Bill [H.L.] [3rd December.

In Committee:—

Expiring Laws Continuance Bill [H.C.] [3rd December.
Population (Statistics) Bill [H.L.] [3rd December.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time:—

Occupier's Liability (Scotland) Bill [H.C.] [2nd December.

In Committee:—

Local Employment Bill [H.C.] [9th December.

B. QUESTIONS

PATENT APPLICATIONS

Mr. REGINALD MAUDLING said that the periods which currently pass between the ascertainment that a patent application was in order for acceptance and its acceptance, and between its acceptance and the printed publication of the specification, were approximately seven weeks and seventeen weeks respectively. The period between the expiry of the opposition period when the patent application was unopposed and the grant of the patent was three weeks. [7th December.

STATUTORY INSTRUMENTS

Argyll County Council (Allt Mor, Clachan) Water Order, 1959. (S.I. 1959 No. 2041.) 5d.
Draft **General Grant** (Increase) Order, 1959. 5d.
Goods for Exhibition (Temporary Importation) Regulations, 1959. (S.I. 1959 No. 2026.) 5d.
Harpenden Water (No. 2) Order, 1959. (S.I. 1959 No. 2023.) 5d.
Indian Military Widows' and Orphans' Fund (Amendment) (No. 2) Rules, 1959. (S.I. 1959 No. 2055.) 5d.
London Traffic (Prescribed Routes) (City of London) (No. 2) Regulations, 1959. (S.I. 1959 No. 2051.) 4d.
London Traffic (Prohibition of Waiting) (Sevenoaks) Regulations, 1959. (S.I. 1959 No. 2052.) 5d.
Motor Vehicles (Construction and Use) (Track Laying Vehicles) (Amendment) Regulations, 1959. (S.I. 1959 No. 2053.) 6d.
National Health Service Regulations, 1959:—
Travelling Allowances, etc. (Amendment). (S.I. 1959 No. 2042.) 5d.
Travelling Allowances, etc. (Scotland) (Amendment). (S.I. 1959 No. 2056.) 5d.
North of Twyning–North of Lydiate Ash (Connecting Roads) Special Roads Scheme, 1959. (S.I. 1959 No. 2034.) 5d.
Nurses Orders, 1959:—
Area Nurse-Training Committees (Amendment). (S.I. 1959 No. 2043.) 5d.
Regional Nurse-Training Committees (Scotland) (Amendment). (S.I. 1959 No. 2057.) 5d.

Poole and East Dorset Water Board Order, 1959. (S.I. 1959 No. 2024.) 1s. 1d.
Road Traffic Act, 1956 (Commencement No. 9) Order, 1959. (S.I. 1959 No. 2021.) 4d.
Solicitors' Remuneration Order, 1959. (S.I. 1959 No. 2027.) 5d. See p. 1010, *ante*.
Solicitors' Remuneration (Registered Land) Order, 1959. (S.I. 1959 No. 2028.) 5d. See p. 1010, *ante*.
South of Pottersheath–North of Graveley Special Road (Stevenage By-Pass) (Extension) Scheme, 1959. (S.I. 1959 No. 2020.) 4d.
Stopping up of Highways Orders, 1959:—
County of Derby (No. 20). (S.I. 1959 No. 2031.) 5d.
County of Essex (No. 18). (S.I. 1959 No. 2035.) 5d.
County of Kent (No. 12). (S.I. 1959 No. 2029.) 4d.
County of Kent (No. 19). (S.I. 1959 No. 2030.) 5d.
County of Kent (No. 21). (S.I. 1959 No. 2007.) 5d.
London (No. 51). (S.I. 1959 No. 2016.) 5d.
County Borough of Middlesbrough (No. 2). (S.I. 1959 No. 2008.) 5d.
County of Middlesex (No. 7). (S.I. 1959 No. 2017.) 5d.
County of Middlesex (No. 8). (S.I. 1959 No. 2018.) 4d.
County of Middlesex (No. 9). (S.I. 1959 No. 2019.) 5d.
County of Northumberland (No. 5). (S.I. 1959 No. 2036.) 5d.
County of Surrey (No. 7). (S.I. 1959 No. 2033.) 5d.
County of Warwick (No. 14). (S.I. 1959 No. 2037.) 5d.
Superannuation (Transfers between the Civil Service and Public Boards) (Amendment) Rules, 1959. (S.I. 1959 No. 2015.) 5d.
Tribunals and Inquiries Act, 1958 (Commencement No. 2) Order, 1959. (S.I. 1959 No. 2044.) 4d. See p. 1032, *post*.
Wild Birds (Trethias Island Sanctuary) Order, 1959. (S.I. 1959 No. 2009.) 4d.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of " The Solicitors' Journal "]

Defaulting Debtors and Hire Purchase

Sir,—The way of the judgment creditor and those who act for him has long been a clown's progress designed for the amusement of the debtors. It is the adult equivalent of the game of " tick " where those who are pursued are immune as long as they touch something made of metal or other substance provided by the rules.

All solicitors know the exasperation of execution which reveals that a debtor's furniture, motor car, television, radio, washing machine, tape recorder and a host of other luxuries are being enjoyed on hire purchase. The creditor has finally to accept a ridiculously small order because of the debtor's hire-purchase commitments. He cannot distrain on any of the goods which are probably providing a higher standard of living for the debtor than that which the creditor himself enjoys. All this stems from the law of hire purchase under which goods remain the property of a hire-purchase company until the last payment has been made. This seems to be the height of folly and capable of reform.

If I buy a motor car for £100 but have not yet paid for it under the terms of a normal cash sale, the car forms part of the goods upon which my creditors can distrain; if, on the other hand, I buy it on hire purchase, it cannot be touched by my creditors so that the person who sells to me a car at a cash price is in a less protected position than the hire-purchase company who sells the car to me, ultimately at a greatly inflated figure. If only the drastic reform of making goods in the possession of a debtor which are on hire purchase susceptible to execution were carried through, not only would the debtors treat their responsibilities more seriously, but there would be a healthy effect upon the finance companies and the community as a whole; for credit terms would not be given on such flimsy evidence as the so-called " status enquiries."

I am aware of all the arguments which might be advanced against this by the finance companies, but I am not greatly impressed by them and I feel that the interests of a vast body of honest trade creditors who are daily put at a disadvantage in the collection of their proper debts are of greater importance than the subsidising of defaulting debtors through the insane system which now prevails. If I were basing the argument on a few isolated cases this letter would not be justified, but I think all solicitors who engage in the collection of debts for their clients will agree with me that the occurrence of these things is far too frequent and that a change is called for.

I do not suggest that the reform can be effected in quite so simple a manner as this letter may have suggested, but I do feel that something can be done to remove the triumphant sneer of the debtor when he turns to the bailiff to reveal that all he possesses belongs to a hire-purchase company.

I would welcome the views of your readers as to how reform may be effected.

LYNDON IRVING.

Derby.

Registration of Title to Motor Cars ?

Sir,—We are prompted by reading the article by Dr. J. Gilchrist Smith in your issue of 20th November (p. 910, *ante*), and, in particular, the opening paragraph thereof, to enquire whether some elaboration of the procedure for transferring " the property " in motor cars is not more urgent, in the public interest, than simplification of the procedure for transferring the ownership of land.

Most solicitors in general practice could cite hard cases where people of small means and little business experience have bought second-hand motor cars and paid for them by the " simple " procedure so beloved of our critics, only to find, months later, that the vehicle was the subject of a hire-purchase agreement and that they have to pay over again to the true owners.

Often this agreement is three or four removes backwards in the chain of alleged " owners " most of whom have acted in good faith. A recent experience shows that even a purchase from the premises of an apparently established dealer is no protection against this contingency.

We suggest that (on the analogy of certain of the rules affecting land registration) a method of registration of title would solve the difficulty simply and cheaply.

Thus :—

(1) Every county and county borough council now keeps a register of motor cars first registered with them. This register should be made the sole and exclusive document of title to the car. For the scheme to work this register must remain with the authority which first registers the vehicle, but this need not affect in any way the renewal of licences for which purpose the production of the licence book would continue to be sufficient. The licence book would be evidentiary only and would not be proof of title;

(2) Persons having liens, charges or other enforceable claims to possession or powers of sale over the vehicle (other than repairers' possessory liens) should be required to register their claims upon pain of being postponed to a *bona fide* registered transferee for value;

(3) Transfer should be by a simple printed form in which all registered incumbrancers (whose incumbrances under the present law would entitle them to defeat the transferee's title) should be required to join. As an additional safeguard the form might incorporate a statutory declaration that the transferor is entitled to sell;

(4) There would have to be a procedure for postal search which could be given the automatic effect of a short priority notice;

(5) The completion of the transfer would be evidenced by the return of the amended licence book or a duplicate if the original be lost.

This scheme would be easy to work and the small additional expense to registration authorities would be justified by the fraud it would prevent. Alternatively, it could be met by a small addition to the fee for a driving licence plus a small charge for registering the transfer.

We should be interested to hear whether these outline suggestions appeal to your readers.

L. A. WALLEN & JENKINS.

Abertillery,
Mon.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

House of Lords

EXCHANGE CONTROL: PAYMENT OUTSIDE UNITED KINGDOM: LACK OF TREASURY CONSENT

Contract and Trading Co. (Southern), Ltd. *v.* Barbey and Others

Viscount Simonds, Lord Goddard, Lord Radcliffe, Lord Cohen and Lord Keith of Avonholm

30th November, 1959

Appeal from the Court of Appeal ([1959] 2 Q.B. 157; p. 327, *ante*.).

The plaintiffs were foreigners, who were the holders in due course of bills of exchange amounting to £8,700, of which the defendants, an English company, were the acceptors. The plaintiffs were resident outside the scheduled territories, and, accordingly, Treasury permission was required by virtue of the Exchange Control Act, 1947, for the payment of the bills by the defendants to the plaintiffs. No such permission was granted. The plaintiffs sued the defendants on the bills of exchange and applied for summary judgment under R.S.C., Ord. 14. Apart from the possible effect of the Act of 1947, the defendants did not dispute their liability on the bills. The defendants contended that the plaintiffs' claim was defeated, not only by the withholding of the Treasury consent, but also by the implied term in s. 33 (1) of the Act of 1947, and that therefore the plaintiffs could not bring themselves within para. 4 of Sched. IV to the Act, which was limited to cases where the parties had excluded the implied term. McNair, J., upheld the master's order giving the plaintiffs leave to sign final judgment, and the defendants appealed unsuccessfully to the Court of Appeal. They now appealed to the House of Lords.

VISCOUNT SIMONDS said that the Act of 1947 was a far-reaching measure designed for the protection of the national economy. The relevant part of s. 5 was as follows: "Except with the permission of the Treasury, no person shall do any of the following things in the United Kingdom . . . (*a*) make any payment to or for the credits of a person resident outside the scheduled territories; or . . . (*c*) place any sum to the credit of any person resident outside the scheduled territories." By s. 33: "(1) It shall be an implied condition in any contract that where, by virtue of this Act the permission or consent of the Treasury is at the time of the contract required for the performance of any term thereof, that term shall not be performed except in so far as the permission or consent is given or is not required . . . (3) The provisions of Sched. IV to this Act shall have effect with respect to legal proceedings . . ." The contractual obligation of payment created by a bill of exchange was a term for the performance of which Treasury permission was required. The defendants' argument was that if one wrote out the condition implied by the statute one would get a promise to pay on the due date or on the date when Treasury permission was given, whichever was the later date; it was on that date and not before that the bill became due and actionable. It might have been necessary to acquiesce in this argument if the Act had ended with s. 33 (2), but subs. (3) and Sched. IV, to which it referred, demanded a different interpretation to be put on s. 5 in conjunction with s. 33. Paragraph 4 of Sched. IV was vital: "(1) In any proceedings in a prescribed court and in any arbitration proceedings a claim for the recovery of any debt shall not be defeated by reason only of the debt not being payable without the permission of the Treasury and of that permission not having been given or having been revoked." The High Court of Justice was such a prescribed court. Without doing violence to ss. 5 and 33 it was possible to give them a meaning harmonising with Sched. IV and making the scheme of the Act consistent and intelligible. A debt arising under a bill of exchange was a debt to which para. 4 applied and a claim for its recovery was not to be defeated by the fact that Treasury permission to pay it had not been given. Paragraph 3 and the latter part of para. 4 clearly contemplated the payment into court of all debts to which the first part of para. 4 applied. The appeal should be dismissed.

LORD GODDARD, LORD RADCLIFFE and LORD COHEN agreed that the appeal should be dismissed.

LORD KEITH OF AVONHOLM dissented. Appeal dismissed.

APPEARANCES: *Patrick O'Connor* and *Raymond Kidwell* (*Lipton & Jefferies*); *Norman Tapp* (*Markby, Stewart & Wadesons*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law]

COMPANY: WHETHER "RESIDENT IN UNITED KINGDOM"

Unit Construction Co., Ltd. *v.* Bullock (Inspector of Taxes)

Viscount Simonds, Lord Radcliffe, Lord Cohen, Lord Keith of Avonholm and Lord Denning

30th November, 1959

Appeal from the Court of Appeal ([1959] Ch. 315; p. 238, *ante*).

Three companies, which were wholly owned subsidiaries of Alfred Booth & Co., Ltd., an investment trust company resident in the United Kingdom, were at all material times registered and resident in Kenya. The boards of the three subsidiaries were entirely distinct from the board of the parent company but the board of the parent exercised control in matters of policy and in effect told the boards of the African subsidiaries what to do, and those boards always accepted the instructions and acted accordingly. The appellant company, also a wholly owned subsidiary of Alfred Booth & Co., Ltd., made certain payments to the African subsidiaries which it claimed to deduct in computing its profits for the purposes of its assessments to income tax under Case I of Sched. D. It was admitted that if the African subsidiaries were "resident in the United Kingdom" within the meaning of s. 20 (9) of the Finance Act, 1953, then the payments in question were subvention payments which the appellant company was entitled to deduct. The Special Commissioners held that the admitted residence in Kenya did not preclude a second residence in the United Kingdom, and that each of the African subsidiaries was resident in the United Kingdom because the controlling power and authority, which according to the constitutions of the companies was vested in their respective boards of directors, was in fact exercised by the parent company. On appeal Wynn Parry, J., reversed that decision. The appellant company appealed unsuccessfully to the Court of Appeal and now appealed to the House of Lords.

VISCOUNT SIMONDS said that a limited company resided for income tax purposes where its real business was carried on and that was where the central management and control actually abode. An artificial person, like a natural person, might have more than one residence. The management of the African subsidiaries which were incorporated in Kenya and registered in Nairobi was placed in the hands of their directors and their articles of association expressly provided that directors' meetings might be held anywhere outside the United Kingdom. But the management of the business of the companies was not exercised in the manner contemplated. It followed that the businesses were conducted in a manner irregular, unauthorised and perhaps unlawful. The Court of Appeal held that it was acts or elements regular and not irregular, constitutionally lawful and not unlawful, that must be regarded as determining the question of management and therefore of residence. But a business was none the less managed in London because it ought to be managed in Kenya. It was the actual place of management, not the place in which it ought to be managed, which fixed the residence of a company. The appeal should be allowed.

The other noble and learned lords agreed. Appeal allowed.

APPEARANCES: *Talbot*, Q.C., and *John Creese* (*Herbert Smith & Co.*); *Borneman*, Q.C., and *Alan Orr* (*Solicitor of Inland Revenue*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law]

Court of Appeal

JUDGMENT DEBT: COMMITTAL ORDER: POWER OF REVOCATION

Wiltshire *v.* Fell

Hodson and Ormerod, L.JJ. 16th November, 1959

Appeal from Devizes County Court.

A committal order was made by a county court judge for non-payment of instalments of a judgment debt; later he revoked it, being convinced of the debtor's genuine inability to pay. Section 5 of the Debtors Act, 1869, contains a power, in certain circumstances, to make an order committing a debtor to prison for non-payment of debt, but there is no power in that section or elsewhere in the Act to revoke the order. The creditor appealed against the revocation.

HODSON, L.J., said that by s. 5 of the Debtors Act, 1869, there could be no imprisonment which was to operate as a satisfaction or extinguishment of any debt, but the power to commit to prison was still retained in that section. There were, however, no words in that section or elsewhere in the Act which enabled a judge to revoke an order for committal to prison which he had made. In contrast, s. 27 of the Administration of Justice Act, 1956, which contained penalties in the case of debtors failing to attend on the hearing of a judgment summons for examination as to their means, and provided that a judge might make an order committing a debtor to prison for a period not exceeding fourteen days in respect of such failure, provided, by subs. (4): "The judge may at any time revoke an order committing a person to prison under this section and, if he is already in custody, order his discharge." There was, therefore, the omission from the 1869 Act of any power such as that contained in the 1956 Act to revoke an order made for committal to prison. There was some assistance in *Evans* v. *Wills* (1876), 1 C.P.D. 229, where the debtor had been committed upon a judgment summons under the Debtors Act, 1869, for non-payment of a debt and it was held that a second warrant of commitment could not be issued against him in respect of the same debt. The position was that, the Act having given no power to revoke a committal order, the committal order which had been made must stand and could only be revoked upon appeal. That did not, in any way, take away from the judge the power to vary the effect of the order or to suspend its operation or in any way remove his control of the case. The appeal would be allowed, and the order of the judge varied in so far as he had purported to revoke the order for commitment.

ORMEROD, L.J., delivered a concurring judgment.

APPEARANCES: *G. G. Macdonald* (*Vallance & Vallance*, for *Parry Mackan & Hamilton*, Bristol). The respondent was not represented and did not appear.

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[3 W.L.R. 984**

Chancery Division

PASSING OFF: USE OF NAME "CHAMPAGNE": UNLAWFUL TRADE COMPETITION

J. Bollinger and Others *v.* Costa Brava Wine Co., Ltd.

Danckwerts, J. 13th November, 1959

Preliminary points of law.

The plaintiffs, companies incorporated under French law, suing on behalf of themselves and all other persons producing wine in the Champagne district of France which was supplied to England and Wales, claimed an injunction restraining the defendants from applying the trade descriptions "champagne" or "Spanish Champagne" to wine made in Spain or from grapes grown in Spain, from passing off such wine as wine produced in the Champagne district by selling it as "Spanish Champagne" or under any other name, including the name "champagne," and a declaration that the description "Spanish Champagne" or one including "champagne" was a false trade description. By their statement of claim, the plaintiffs alleged that their wine was a naturally sparkling wine produced in the Champagne district by a process of double fermentation from grapes grown in the district, that it had long been known to the trade and public in the United Kingdom as "champagne" and as such had acquired a high reputation, and that a member of the public or trade would understand "champagne" to mean their wine. They further alleged that the descriptions used by the defendants were false trade descriptions of wine produced in Spain, that sales of the wine by the defendants were an offence under s. 2 (2) of the Merchandise Marks Act, 1887, and were in breach of the statutory duty which the defendants owed to the plaintiffs and that the defendants were acting in unlawful trade competition with the plaintiffs. The defendants denied that they had passed off their wine for that of the plaintiffs, or that if they had so passed it off, they had done anything for which the plaintiffs had a cause of action in English law; they also denied that the descriptions were false trade descriptions within the meaning of s. 2 (2), or that the subsection imposed any statutory duty upon them, and that any of their alleged acts constituted unlawful competition; alternatively, they contended that unlawful competition was not a cause of action known to English law. The following preliminary points of law were set down for hearing before trial under Ord. 25, rr. 2 and 3: (*a*) whether, assuming the truth of the plaintiffs' allegations, if the defendants had, as alleged, passed off their wine for that of the plaintiffs they had done any act in respect of which the plaintiffs had a cause of action according to English law; (*b*) whether s. 2 (2) imposed a statutory duty on the defendants or a duty owed by them to the plaintiffs, and, if it did, whether it gave rise to an action in law; and (*c*) whether the plaintiffs' allegation that the defendants' acts constituted unlawful trade competition was sufficient to support a cause of action in English law.

DANCKWERTS, J., said that the law might be thought to have failed if as a general rule it could offer no remedy for the deliberate act of one person which caused damage to the property of another. There seemed to be no reason why licence should be given to a person, competing in trade, who sought to attach to his product a name or description with which it had no natural association so as to make use of the reputation and goodwill which had been gained by a product genuinely indicated by the name or description. It ought not to matter that the persons truly entitled to describe their goods by the name and description were a class producing goods in a certain locality, and not merely one individual. The description was part of their goodwill and a right of property. He did not believe that the law of passing off, which arose to prevent unfair trading, was so limited in scope. The decision in the *Pillsbury-Washburn Flour Mills* case (1898), 86 Fed. Rep. 608, was good sense. The law should and did provide a remedy for the types of passing-off and unfair competition which was set out in paras. (*a*) and (*c*) of the points of law; but he wished to emphasise that this conclusion was based upon the assumptions of fact which he was required to make for the purpose of the present hearing, and he must not be taken to have accepted in any other way the allegations that what the defendants had been doing caused or was likely to cause any confusion with the wine produced in the Champagne district of France. He was not deciding whether the description "Spanish Champagne" was calculated to deceive. Looking at the Merchandise Marks Acts, 1887 to 1953, as a whole and considering the other provisions of the Acts, he did not find it possible to reach the conclusion that the statutes gave a rival trader a civil right of action. If the Act had the protection of any class of persons in mind, it was the purchasers of goods which might be misleadingly described. But he did not think that the Acts gave a civil cause of action to anyone, except where expressly provided. The severe penalties contained in the Acts were the remedies provided by the Acts, apart from specific provisions in particular cases. For instance, s. 17 of the 1887 Act gave to a purchaser a right of action for breach of warranty, which would appear to be unnecessary if the other provisions of the Act already gave a cause of action. Moreover, both rival traders in a passing-off action and purchasers of goods in an action based on deceit had rights of action apart from these statutes, and those rights were carefully preserved by s. 19 of the 1887 Act. The answer on point (*b*) must be that the Acts did not impose any statutory duty on the defendants which enabled the plaintiffs to bring an action against them.

APPEARANCES: *R. O. Wilberforce*, Q.C., *P. J. Stuart Bevan*, *R. K. Kuratowski* and *E. G. Nugee* (*Monier-Williams & Keeling*); *Sir Milner Holland*, Q.C., *F. E. Skone James* and *S. H. Noakes* (*Summer & Co.*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law] **[3 W.L.R. 966**

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: JUDICIAL SEPARATION: ADULTERY BY SPOUSE SEEKING DECREE: DISCRETION NEED NOT BE PRAYED OR LODGED

Haniver *v.* Haniver

Sachs, J. 11th November, 1959

Petition for divorce.

A husband petitioned for divorce on the ground of adultery, praying for the exercise of the court's discretion in respect of his own adultery. The wife, by her answer, denied that she had committed adultery, cross-charged adultery against the husband and prayed for a judicial separation. The court held that the wife had committed adultery, but that the husband had condoned it. The husband's prayer was therefore rejected. It was argued on behalf of the husband that, although the wife had, in view of the husband's admitted adultery, established the ground for relief, she was not entitled to relief because she had not prayed for the court's discretion in respect of her adultery, nor had she lodged a discretion statement.

SACHS, J., said that on the question whether a party seeking a judicial separation was required to pray for the exercise of the court's discretion in respect of his own adultery, or to lodge a discretion statement pursuant to r. 28 of the Matrimonial Causes Rules, 1957, there was a conflict between the view expressed in Rayden on Divorce and that expressed in Latey on Divorce. According to Rayden (7th ed., p. 244), a discretion statement was not considered to be necessary in such circumstances. According to Latey (14th ed., p. 669), a prayer for discretion and a discretion statement were necessary. Both r. 4 (4) and r. 28 (1) of the Matrimonial Causes Rules, 1957, and the predecessors of those rules referred to the court's discretion to grant a decree *nisi*. A decree of judicial separation, however, was a final decree and not a decree *nisi*. Those rules were inaptly worded to apply to a prayer for judicial separation. It accordingly followed that where, as here, a decree of judicial separation was prayed for, no discretion statement was required and no prayer for the court's discretion necessary. Decree of judicial separation.

APPEARANCES: *R. J. A. Temple*, Q.C., *H. S. Law*, and *J. A. P. Hazel* (*Young, Jones & Co.*); *James Stirling*, Q.C., and *D. Kemp* (*Dollman & Pritchard*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

Court of Criminal Appeal

CRIMINAL LAW: EVIDENCE: ADMISSIBILITY OF STATEMENTS AFFECTING DEFENDANT'S STATE OF MIND

R. *v.* Willis

Lord Parker, C.J., Hilbery and Salmon, JJ.

23rd November, 1959

Appeal against conviction.

The appellant was convicted at Berkshire Quarter Sessions on 3rd July, 1959, of the larceny of a drum of cable from the Atomic Energy Authority at Aldermaston. He was the owner of a scrap metal business and had a contract with the Atomic Energy Authority to collect their scrap weekly. On the day of the offence he accompanied his foreman, *N*, to Aldermaston, taking the necessary lorries for loading the scrap. The appellant left *N* in charge of the loading, and in his absence *N* ordered one of the lorry drivers to load the drum on to his lorry. The drum was later taken back to the appellant's yard and was shortly afterwards delivered to one of the appellant's customers. The police made inquiries and arrested *N*, who subsequently confessed to the theft. The appellant saw *N* in custody, and later made a statement to the police. At the appellant's trial, his case was that he was ignorant of the taking and disposal of the drum, and an important part of the case against him was that he had failed to give candid answers to the police. *N* was not called by the defence, but it was sought to give evidence through the appellant of the content of his conversation with *N*, as explaining his state of mind when he made the statement. The deputy chairman ruled that this evidence was inadmissible.

LORD PARKER, C.J., delivering the judgment of the court, said that the ruling of the deputy chairman was wrong. It was clear that what had been said by someone, even if that person were not called, might be good evidence of a defendant's state of mind; this was the effect of *Subramaniam* v. *Public Prosecutor* [1956] 1 W.L.R. 965 [an appeal to the Judicial Committee of the Privy Council]. It was true that in that case the Board were considering the state of mind of the defendant at the time of the commission of the alleged offence; but provided that the defendant's state of mind was relevant, it mattered not when the statement was made. Accordingly, the evidence was wrongly excluded, and had it been admitted the deputy chairman's comments in the summing-up would have taken a different form. The question, however, whether the absence of a true statement to the police was consistent with innocence would still have arisen, and having regard to the overwhelming evidence for the prosecution the jury would have been bound to come to the same conclusion. Accordingly, the appeal would be dismissed.

APPEARANCES: *Edward Clarke* (*Nelson Mitchell & Williams*, Southend); *Kenneth Jones* (*Solicitor to Berkshire County Council*).

[Reported by GROVE HULL, Esq., Barrister-at-Law]

CRIMINAL LAW: CONSECUTIVE SENTENCES OF NINE MONTHS' IMPRISONMENT IN RESPECT OF TWO CHARGES: SUPERVISION ORDER

R. *v.* Mordanam

Lord Parker, C.J., Hilbery and Salmon, JJ.

1st December, 1959

Application for leave to appeal against sentence.

A defendant pleaded guilty before justices to two charges of obtaining money by false pretences, and, having asked for eleven other offences to be taken into consideration, was committed to quarter sessions for sentence under s. 29 of the Magistrates' Courts Act, 1952. Quarter sessions sentenced him to nine months' imprisonment on each charge, the sentences to run concurrently, and made a supervision order under s. 22 of the Criminal Justice Act, 1948. The defendant applied for leave to appeal against sentence.

HILBERY, J., giving the judgment of the court, said that leave to appeal would be given and the court would treat the application as the hearing of the appeal. In the view of the court the sentence of nine months' imprisonment in respect of each of the two charges did not bring the case within the ambit of s. 22 of the 1948 Act. It was true that when a case was committed to quarter sessions under s. 29 of the 1952 Act the hearing at quarter sessions was treated as a trial on indictment, but, treating it as a trial on indictment, there was not a sentence in respect of an offence charged in the indictment which was one of imprisonment for twelve months or more within s. 22 of the 1948 Act; each sentence was one of less, and it was not a case in which that section required an order to be made. The sentence would be varied so as to eliminate from it the order under s. 22. Order accordingly.

APPEARANCES: The defendant did not appear and was not represented.

[Reported by Miss J. F. LAMB, Barrister-at-Law]

CENTRAL LAND BOARD REPORT FOR 1958–59

A report on the work of the Central Land Board for the financial year 1958–59 was published on 9th December, as a White Paper (Cmd. 908, H.M.S.O., 9d.) by the Minister of Housing and Local Government. It completes the series of annual reports published by the Board, which was dissolved on 1st April, 1959. The Board's remaining functions in England and Wales were transferred to the Minister of Housing and Local Government, and in Scotland to the Secretary of State. Future accounts of the work will be incorporated in the annual reports of their departments.

REVIEWS

Hire-Purchase Accounts and Finance. By H. SIMPSON COOK, F.C.I.S., J. ANDERSON HERMON, A.C.A., and H. PEARSE, A.A.C.C.A. pp. (with Index) 144. 1959. London: Gee & Co. (Publishers), Ltd. £1 7s. 6d. net.

In this work the authors, who are engaged in handling hire-purchase business, have applied the technique of modern management accounting to the many and specialised problems which face the executive dealing with hire-purchase trading. It is written largely with the executive in mind, but it should be of interest to all concerned with hire-purchase business. The book contains "a brief exposition" of the law relating to hire purchase, two chapters being devoted to a "brief outline" of the law while a third is devoted to emergency legislation. In view of the fact that all controls on hire purchase and other forms of instalment trading have now been removed, the chapter on emergency legislation is obviously of limited value. The other two chapters are devoted to a statement of the fundamental principles of the law relating to hire purchase and other instalment contracts and a consideration of the Hire-Purchase Acts of 1938 and 1954. Although this volume could not be described as a legal text-book, it would be of value to the solicitor seeking an introduction to hire-purchase accounts and finance.

A Practical Manual of Standard Legal Citations. Second Edition. By MILES O. PRICE, B.S., B.L.S., LL.B., LL.D. pp. iv and (with Index) 122. 1958. New York: Oceana Publications, Inc.; Agents in the U.K.: Stevens & Sons, Ltd. £1 10s. net.

For the most part this manual of standard legal citations concerns American law, only a small proportion of it covering English and foreign methods of citing. It deals with, among other things, statutory and case material, reports, periodicals, page citations, capitalisation, abbreviations and typography.

Although we are not competent to comment on American citing practice, our impressions on the sections concerning English law may be welcome. On p. 29 of the manual several ways of citing English statutes are given. Although the examples may be correct usage for American legal publications, they differ from the usual practice of legal publishers in England. The first example set out on that page gives the title and date, the chapter number, the section of and the Schedule to the Act. In this country the chapter number would in this context be regarded as superfluous. Immediately following that citation it is stated that "Where the title of the statute is not given, add the date, in parentheses, at the end of the citation," but it is not usual to give the date in parentheses in a citation such as this. Also on the same page statutory rules and orders are shown to be cited as: S.R. & Order 1914 (No. 1629), but in English practice that citation would be given as: S.R. & O. 1914 No. 1629. A minor point: in the very useful list of abbreviations we see that the apostrophe in SOLICITORS' JOURNAL is misplaced.

This publication will be more useful for librarians and legal editorial staff than for practising lawyers. We feel sure that to such persons the manual will prove helpful in checking the correct form for American citations.

The Junior Branch. By GEOFFREY WOOLFE. pp. 226. 1959. London: P. R. Macmillan, Ltd. 12s. 6d. net.

This novel, written by a practising solicitor, recounts the experiences of a young solicitor from the time when he tires of being an assistant solicitor after working for five years in that capacity. Most of the story centres on its hero's adventures as a junior partner, enlivened as these are by the absence abroad, ill, of the senior partner, the existence of an attractive slip of a female articled clerk, an embittered elderly secretary who writes reports about the junior to the senior partner, a dishonest outside clerk and faithful managing clerk who is a conveyancing expert. Then, of course, there are the clients and their problems. We found the section dealing with the adoption of an illegitimate child and the vacillation of her mother (p. 187 *et seq.*) particularly appealing. We also thought not out of place the digs at "the senior branch" to be found on and following p. 137; till now there has been no reply in kind to remarks made about solicitors in a well-known series of novels written from the Bar's point of view. The book makes light entertainment reading and the story leaves its central figure with his plate up waiting anxiously for the first clients of his own practice to appear. We should not be surprised if they oblige in a sequel to this volume.

Fees and Faculties. Report of a Commission of the Church Assembly. pp. 82. 1959. London: The Church Information Office. 5s. net.

The Fees and Faculties Commission was appointed in 1953 "to examine the system of ecclesiastical fees and the law relating to faculties and to report." The Report gives a full account of the Church's system of fees, both those payable to the legal officers for work done in connection with such matters as ordinations, admissions of clergymen to benefices or other offices and marriage licences, and those payable to the clergy and other parish officers for marriages, burials and the erection of monuments in churchyards. The Commission agreed that there should be no general abandonment of the fees system, but was divided as to whether the legal officers should be paid by fee or salary. A number of recommendations are made for the improvement of the faculty system, which was in general accepted as the most appropriate method of authorising alterations in churches and churchyards. Although this Report has only the authority of the Commission by which it was prepared, there is much in it of general interest and of value to the practitioner concerned with ecclesiastical matters.

1959 Supplement to Index and Digest of Tax Cases decided in the courts during the year ending 31st July, 1959. pp. xxi and (with Index) 25. London: Income Tax Payers' Society.

The 1959 Supplement to the Index and Digest of Tax Cases, published by the Income Tax Payers' Society, contains reports of tax cases decided in the courts during the year ended 31st July. Each case is indexed under name and subject-matter and is reported in non-technical language. This supplement is the sixth volume of a series which contains every case concerning the whole range of income tax, surtax and profits tax heard in the courts since 1933.

Numerical Table, S.R. & O. and S.I. Second Edition. A Numerical Table of the General Statutory Rules and Orders and Statutory Instruments in Operation at 31st December, 1958. 1959. pp. 193. London: H.M.S.O. 9s. net.

This table lists, by year and registered number, all instruments classified as general which were in operation on 31st December, 1958. However, it does not include those Defence Regulations which ceased to have effect shortly afterwards by virtue of the Emergency Laws Repeal Act, 1959, or the orders, etc., made under them, nor does it include instruments the subject-matter of which is exclusively the responsibility of the Legislature of an overseas territory. For information as to how instruments excluded as no longer in operation ceased to be in operation, readers should consult the companion booklet, "S.I. Effects" reviewed at p. 411, *ante*.

The Stock Exchange Year-Book, 1959. Volume 2. Editor-in-Chief: Sir HEWITT SKINNER, Bt. 1959. London: Thomas Skinner & Co. (Publishers), Ltd. Two volumes. £8 5s. net.

With the publication of this second volume the 1959 edition is complete. It contains the commercial and industrial group of quoted securities, and includes a combined general index to both volumes of the year-book. In the two volumes there are eighty new notices of companies which have been added since the 1958 edition, and details of twenty-three new stocks added to the Government and Corporation sections.

The Nuffield Foundation. Fourteenth Report for the year ended 31st March, 1959. pp. xii and (with Index) 201. Oxford: The University Press.

We learned from this report that the grant allocations made by the Nuffield Foundation in the year 1958–59 for the first time exceeded £1m. Approximately one-quarter of this was spent in the Commonwealth—mostly in Africa—and the rest was spent at home on scientific, medical, and social projects and on fellowships. The following is a brief account of just a few of the grants made in the year ending March, 1959: *London School of*

Economics and Political Science (*University of London*)—£2,500 to Professor W. A. Robson for a co-operative assault by a group of scholars on the problem of the Government of Greater London. As well as being of academic significance, the study has produced evidence for the Royal Commission on Local Government in Greater London; *University College of North Staffordshire*—£2,200 to Professor S. E. Finer and Mr. H. B. Berrington for a study of Parliament, in the department of political institutions. They are examining the " early day " motions by which back-benchers express personal views often opposed to those of their leaders. An investigation is also being made of the social characteristics of the signatories; *Institute of Psychiatry* (*University of London*)—£17,000 over five years for an investigation into the incidence and type of mental disease in general medical practice by Dr. Michael Shepherd of the Institute of Psychiatry. The aim of the study, in which about thirty general practitioners are participating, is to get a clearer picture of the distribution of mental illness in the community and of the proper scope of the general practitioner's work in the field of psychiatry; and " *Youth Ventures* "—£3,500 to help to establish a charitable body which would provide further amenities for young people in new towns and in other places lacking in commercial amenities.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the " Points in Practice " Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Assent by Personal Representative in Own Favour

Q. A testator by his will appointed his wife *B* sole executrix and gave her everything. The testator died on 9th July, 1933, and the will was proved on 9th September, 1933, by the executrix. One of the assets was land subject to a mortgage which was paid off by *B* on 15th July, 1944, and the vacating receipt says by *B* " as personal representative of the testator . . . out of a fund properly applicable to the discharge . . ." By a subsequent conveyance dated 15th August, 1944, *B* conveyed the property (by way of settlement) to her trustees and she was recited as being seised of the property in fee simple free from incumbrances. *B* did not there convey as personal representative or as beneficial owner but as settlor. No assent by *B* as personal representative vesting the property in herself as absolute owner has been abstracted.

We are now acting for a client purchasing the property and the solicitors to her present trustees refuse to allow *B* to join in the proposed conveyance to our client (which she has anyhow to do in another capacity as consenting to the sale) to confirm as personal representative of the testator. They have referred us to Emmet on Title, 14th ed., vol. 2, p. 474, where it is noted that where there is a change in capacity it is desirable but not essential to have an assent by a personal representative in her own favour to indicate a change in capacity, and also to s. 36 (1) of the Administration of Estates Act, 1925, where a personal representative has power to vest in any person who may be entitled. (1) Can our client rescind the contract on the ground that the trustees have not shown a good title and that *B* refuses to join in our conveyance as personal representative of the testator? (2) Can we advise a mortgagee to lend money on a title lacking such an assent?

A. (1) In our opinion, no. It is a question of fact whether *B* has impliedly assented in her own favour beneficially. We consider that a court would hold that *B's* action in executing the conveyance by way of settlement, containing the recital of seisin, would (even assuming there was no earlier implied assent) amount to an assent in her own favour. An argument on these lines, applied to an appointment of new trustees, is contained in Emmet, *op. cit.*, p. 474, last paragraph. In any case the action of *B* in joining in the conveyance, even in another capacity, would, in our view, convey any outstanding legal estate. (2) In our opinion, yes. Although a mortgagee is not bound to lend if he does not approve the title, we think titles based on implied assents are now accepted so frequently that a solicitor is justified in advising a mortgagee in this way.

Alterations to Premises without Consent of the Landlord

Q. *L* is the landlord of a cottage controlled under the Rent Acts and let to a tenant *T*. There is no written tenancy agreement. *T* some six months ago converted a small bedroom in the cottage into a bathroom without reference to *L*. *L* became aware of the alteration two months ago and has accepted rent since. Do you consider that the alteration gives rise to a ground for possession under the First Schedule to the 1933 Rent Act? If so, do you consider that it comes under (*a*) obligation broken, or (*b*) deterioration due to waste or default? Do you consider that acceptance of rent in this case would amount to waiver? Can you quote to us a case where there were alterations to premises without consent of the landlord?

A. In our opinion (*a*) the conversion could not be held to amount to breach of implied obligation to use the premises in a tenant-like manner or of implied obligation to deliver up what was demised, so as to enable the landlord to rely on *Marsden* v. *Edward Heyes, Ltd.* [1927] 2 K.B. 1; and (*b*) unless the reference to deterioration implies that the landlord could establish that the cottage was worth less than it had been, the depreciation being due to the conversion, there would be no waste: *Jones* v. *Chappell* (1875), L.R. 20 Eq. 539; *West Ham Central Charity Board* v. *East London Waterworks Co.* [1900] 1 Ch. 624 (these authorities may be said to have disposed of the old view that any alteration was waste; a view propounded in *Queen's College, Oxford* v. *Hallett* (1811), 14 East. 489—in which, however, only nominal damages were recovered).

Income Tax—Investment Allowances for Certain Capital Expenditure

Q. Our client, *A*, Ltd., is an investment company which has recently purchased a freehold site for the purpose of erecting a factory. The factory is to be leased and occupied by *A*, Ltd.'s associated company, *B*, Ltd. Our clients naturally require to obtain, if they can, the allowances under ss. 265 and 266 of the Income Tax Act, 1952. We apprehend that *A*, Ltd., will be entitled to claim such allowances notwithstanding the fact that it does not itself occupy and trade at the premises, as *B*, Ltd., would appear to be a lessee within the meaning of ss. 265 and 266 so as to enable *A*, Ltd., to claim such allowances. If, however, we are incorrect in our assumption, then we presume that there will be nothing to prevent *A*, Ltd., leasing the land to *B*, Ltd., upon a building lease at a ground rent so that *B*, Ltd., can itself build the factory and claim the allowances.

A. We are quite satisfied that you are correct in the view that you express. *A*, Ltd., will incur the expenditure and *A*, Ltd., will get the allowances notwithstanding that the building is to be used not for *A*, Ltd.'s own trade but for the trade of its tenant *B*, Ltd.

Stamp Duty—Exchange of Shares

Q. *A* owns some shares in a limited company and *B* owns some shares in a different and entirely unconnected company. At the present time each holding has the same market value. *A* and *B* desire to exchange their holdings for reasons connected with yield, income tax and capital appreciation. Can the wishes of the parties be carried out without payment of *ad valorem* stamp duty, as would be possible in the case of an exchange of two real properties of the same value? If so, would the method be to have two transfers, each stating the other as the consideration?

A. We are afraid that the exemption from *ad valorem* stamp duty in the case of an exchange of real property does not apply to exchange of shares. Each transfer will have to be adjudicated and will be chargeable to stamp duty on the value of the shares given as consideration under s. 55 (1) of the Stamp Act, 1891.

Rent Restriction—Decontrol—No Valid Notice to Determine Served—Possession for Occupation by Member of Owner's Family

Q. *A* is the owner of a house occupied by *B* which, by virtue of its rateable value, became de-controllable (*sic*) under the 1957 Rent Act. *A* serves a six months' notice to determine the tenancy on *B*. It is subsequently discovered that the notice is invalid owing to a defect in the wording. *A* is about to issue a fresh notice when he genuinely finds that he now requires the house for occupation by a member of his family. Is *A* now in a position to give a four weeks' notice only to *B* and then to sue in the county court for possession on the ground that he requires the same for use by a member of his family, i.e., one of the grounds for possession set out in the pre-1957 Rent Act legislation?

A. Yes; *B's* present right is, in our opinion, a "right to retain possession of the dwelling-house in the like circumstances, to the like extent and *subject to* the like provisions (including in particular provisions as to *recovery of possession* by the landlord) as if the Rent Acts had not ceased to apply to the dwelling-house": Rent Act, 1957, Sched. IV, para. 2 (1). Consequently, if *B* is a statutory tenant, or on determination of his tenancy by not less than four weeks' notice to quit (Rent Act, 1957, s. 16), and on the assumption that the "member of his family" is either a son or daughter over eighteen, or else *A's* father or his mother, *A* can or will be able to sue in reliance on the provisions of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 3 (1) (*a*) and Sched. I, para. (*h*) (ii) or (iii), regard being had to the "balance of hardship" proviso and to the s. 3 (1) overriding consideration of reasonableness.

NOTES AND NEWS

TRIBUNALS AND INQUIRIES

Vacancies among the General Commissioners of Income Tax in England and Wales, previously filled by the Land Tax Commissioners, will, as from 1st January, 1960, be filled by the Lord Chancellor. This date is named as the appointed day, for the purpose of s. 7 of the Tribunals and Inquiries Act, 1958, by the Tribunals and Inquiries Act, 1958 (Commencement No. 2) Order, 1959 (S.I. 1959 No. 2044).

COMPANY LAW COMMITTEE: MEMBERS

The President of the Board of Trade, Mr. Reginald Maudling, M.P., announced in the House of Commons on 10th December the names of the Company Law Committee. They are as follows: Lord Jenkins, chairman; Mr. F. R. Althaus, Mr. E. A. Bingen, Mr. Leslie Brown, Sir George Erskine, C.B.E., Professor L. C. B. Gower, M.B.E., solicitor, Mr. J. A. Lumsden, M.B.E., solicitor, of Glasgow, Mr. W. J. Lawson, C.B.E., Mr. K. W. Mackinnon, Q.C., T.D., M.B.E., Mrs. M. Naylor, Mr. G. W. H. Richardson, Mr. Hilary Scott, solicitor, of London, Mr. R. Smith and Mr. William Watson. The Secretary of the Committee is Mr. P. E. Thornton of the Board of Trade.

BUILDING SOCIETIES

With reference to the consolidated list of building societies designated for purposes of s. 1 of the House Purchase and Housing Act, 1959, published in last week's issue at p. 1009, we have been informed that the Lancashire Building Society should have been described as such, having changed its name from the House and Mill Building Society last June.

HIGH COURT OF JUSTICE: CHRISTMAS VACATION, 1959–60

There will be no sitting in court during the Christmas Vacation. During the Christmas Vacation all applications "which may require to be immediately or promptly heard" are to be made to the judge acting as vacation judge. No application which does not fall strictly within this category will be dealt with. Mr. Justice Winn will act as vacation judge from Tuesday, 22nd December, 1959, to Saturday, 9th January, 1960, both days inclusive. His lordship will sit as Queen's Bench judge in chambers, on Wednesdays, 30th December and 6th January at 10.30 a.m. When the judge is not sitting in chambers, application may be made if necessary, but only in cases of real urgency, to the judge personally. The address of the judge must first be obtained at Room 136, Royal Courts of Justice, and telephonic communication to the judge is not to be made except after reference to the officer on duty at Room 136. Application may also be made by prepaid letter, accompanied by the brief of counsel, office copies of affidavits in support of the application and a minute on a separate sheet of paper signed by counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows:—"To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2." The papers sent to the judge will be returned to the registrar.

PRACTICE DIRECTION

COURT OF PROTECTION

Applications under Variation of Trusts Act, 1958

For the guidance of those who have reason to apply to this court under s. 1 (3) of the Act, the master has directed that the following notes on procedure shall be published:—

1. As soon as an originating summons under the Act to which a patient is a respondent has been issued in the Chancery Division, the Court of Protection should be notified and an authority sought for leave to enter appearance and to apply for or consent to the appointment of a guardian *ad litem* for the patient in those proceedings.

2. No formal application should be issued in the Court of Protection for relief under the Act until the originating summons has been issued in the Chancery Division and evidence filed in support thereof, but the master will in suitable cases authorise counsel to be instructed on behalf of the patient to look after the patient's interests during negotiations for an arrangement.

3. The formal application should only be entitled in the matter of the patient and the only respondent should be the patient unless the master otherwise directs. The master will direct whether the patient is to be served or service dispensed with, and where the master considers that the patient should be separately represented he may request the Official Solicitor to act as solicitor for the patient on the application.

4. A copy of the originating summons (or an office copy if the arrangement is to be found in the summons itself) and office copies of the evidence in support thereof, together with the exhibits, should be lodged with the application and an affidavit filed stating how the patient will be affected by the arrangement and whether it is considered to be for or against his benefit.

5. The master's order will make provision for subsequent approval of amendments which may be made to the arrangement after the date of the order.

9th December, 1959.

E. F. Atkinson.
Chief Clerk and Registrar.

Wills and Bequests

Mr. Thomas Binks Kitson, solicitor, of Westminster, left £590,383 net.

"THE SOLICITORS' JOURNAL"

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